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JOINT VENTURE AGREEMENTS IN THE PEOPLE'S REPUBLIC OF CHINA

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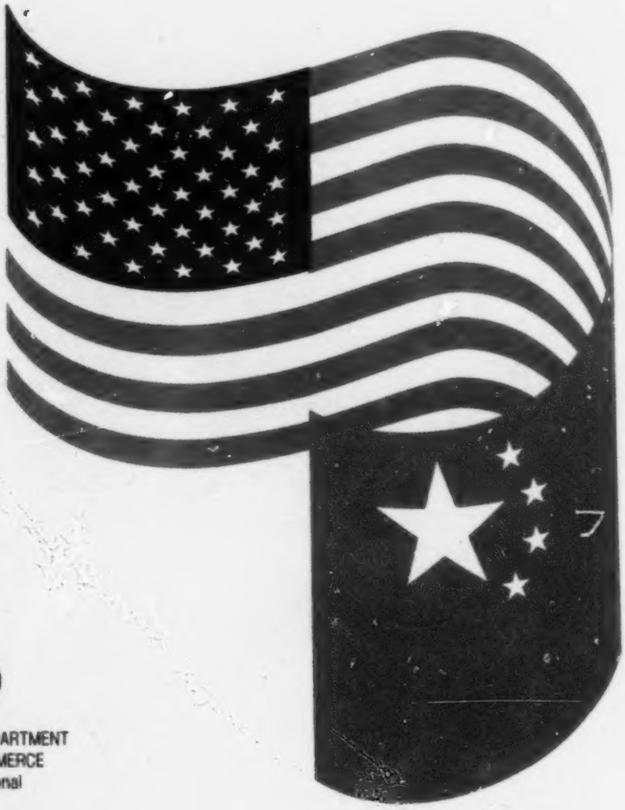

U.S. DEPARTMENT
OF COMMERCE
International
Trade
Administration

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JOINT VENTURE AGREEMENTS IN THE PEOPLE'S REPUBLIC OF CHINA

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U.S. DEPARTMENT
OF COMMERCE

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FOREWORD

The belief of China's Post-Mao leadership that their country will remain a poor, underdeveloped nation vulnerable to foreign pressures unless it can close the widening technology gap with the industrialized countries was one of the factors leading to China's rapid normalization of diplomatic relations with the United States and to increased acquisitions of Western Technology, equipment and plants. It also spurred pragmatic measures intended to introduce cost and profit-oriented criteria in the country's archaic industry.

Because China's economic needs and ambitious industrialization goals are not matched by the country's hard currency earning potential and its willingness to borrow, China's new leaders have found it necessary to readjust their development policies toward more realistic and balanced growth goals. These policies take into consideration the country's deficiencies of materials, energy and technical personnel and are meant to narrow and keep manageable trade and budget deficits. They encourage transactions that provide for foreign investment in China's economy and other types of compensating transactions linking imports with exports.

Although joint venture-related trade is not expected to represent a sizeable portion of China's total trade, the Chinese believe that joint companies will provide them with current foreign technology and marketing and management expertise that will contribute to their ambitious modernization program.

This publication provides a summary of information on joint venture operations in China, and is mainly intended as basic briefing material for companies investigating investments in China. It aims to answer some questions, stimulate others and, in general, provide prospective investors with background information on the formation of joint companies in China. It also includes as appendices the texts of Chinese laws and regulations affecting foreign investment in China, and other relevant background materials.

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I. BACKGROUND

In the optimism following the fall from power of the Gang-of-Four in1976, China set for itself ambitious economic growth targets predicated on high investment rates and the development of heavy industry. A 10-Year Plan (1976-1985), designed to modernize science and technology, agriculture, industry and defense, called for the construction of 120 large industrial projects estimated in 1978 to cost more than $500 billion.

It was not long before the Chinese realized that their ambitious program would overtax their underdeveloped economy, which was still suffering from a decade of political and social upheaval rooted in China's Cultural Revolution. Lacking sufficient resources of capital funds, technical staff, management expertise and construction materials, saddled with an insufficient infrastructure and a shortage of electric power and aware of the political implications that rapid economic and social changes could have for their population, the Chinese proclaimed a "readjustment" policy in 1979 which would lay the basis for more realistic and balanced economic growth.

In the readjustment period, which originally was to last only 2-3 years but which has now been extended through 1985, capital investment is to be cut and the consumption proportion of the national product is to be increased. Emphasis in industrial development is to be shifted to agriculture and light industry, which would provide increased output of consumer goods and exports and increased employment opportunities. Raising living standards is given higher priority than formation of capital. The policy readjustment also projects moderate rates of growth for the country's economy and a balanced pattern of investment aimed at breaking botttlenecks in agriculture, energy and transportation, and emphasizes developing existing manufacturing capacity, rather than building new plants or establishing new industries.

At the same time, China's leadership initiated reforms to restructure the country's economic system and decentralize decision-making. Measures were proposed that would gradually introduce market forces in the economy that would influence operational decisions, with the State exerting influence through macro-economic planning and through fiscal and monetary policy. Among the reforms proposed for gradual adoption in the 1980's by the new Chinese-brand market socialism are:

- introduction of enterprise self-management in hiring and firing workers, planning production targets, fixing prices for most goods and determining distribution of after-tax profits;
- substitution of taxes for profit remissions by enterprises as the main source of State revenue;
- use of interest-bearing loans instead of budgetary grants to enterprises for investment and working capital;
- revival of selected segments of the private sector, particularly in retailing and services.

By 1981, it became apparent to the Chinese government that capital construction levels, which were slated to drop in the readjustment period, had actually continued to increase beyond target. Although capital construction within the State plan had been successfully curtailed, this reduction was more than offset by increases in non-plan investments by regional authorities as a result of fiscal decentralization. In addition, with personal incomes greater than the supply of purchasable goods and with price controls relaxed, inflation, which in 1980 grew to a level officially calculated at about 6 percent (but believed to be at least twice as high), has been eroding improvements in such income.

The present mood of China's leadership is to slow down reform efforts and the decentralization of decision-making powers, and to increase administrative controls by the central authorities. As an immediate measure, China has now slashed capital investment and cancelled or postponed major contracts for importing foreign plants and equipment.

In attempt to encourage foreign investment as a source of foreign technology and capital, China enacted joint venture legislation in July 1979, permitting foreign equity investment in the country and repatriation of profits. The law is long on principles and short on details. A number of fundamental questions regarding valuation of real estate and other assets, tariff duties, domestic marketing and prices and other issues were left for the joint venture partners to sort out in negotiations.

Regulations on registration of joint ventures and on labor management were issued in July 1980. Individual and joint venture income tax laws were passed in September 1980, and detailed regulations issued in December 1980 as were regulations on the registration of permanent representative offices and regulations on foreign exchange controls.

The Chinese also hope to encourage foreigners to invest in undeveloped coastal areas in Guangdong and Fujian provinces by allowing provincial authorities to administer the areas' so-called

Special Economic Zones with a minimum of central government interference. One hundred percent foreign investment, as well as joint ventures, are permitted in these zones, with the emphasis on production for export. (Chinese officials have indicated that proposals for 100 percent foreign-owned investments anywhere in China would be considered).

In the province of Guangdong, two zones have been established near Hong Kong, at the town of Shenzhen north of Hong Kong and at Shekou across from Hong Kong's New Territories. A third zone has been established in the province at Zhuhai, near Macao, and a fourth is expected at Shantou. In the privince of Fujian, a similar zone is being prepared on the coast at Xiamen (Amoy). In order to lure potential investors to process goods within the zones, wage and fee structures are geared to about 70 percent of equivalent industries across the border in Hong Kong or Macao.

Due to the Chinese lack of experience in this field, there have been delays in assessing and processing proposals for foreign investment. This and the current economic retrenchment may have dampened both Western and Chinese enthusiasm for the role which foreign equity ownership can play in China's economic development. In 1981, 19 joint ventures were approved, down from 20 in 1980. But, whereas the 20 in 1980 involved foreign investment of $177 million, the 19 approved in 1981 involved only $20 million of investment.

Of the several dozen joint ventures approved so far or at present under negotiation for operation within China, the overwhelming majority is in the services area, e.g., catering and hotels, or involves assembly and processing in labor-intensive industrial sectors where upgrading Chinese skills does not require substantial Western investment because of existing production capacity.

In the following chapters, this publication will discuss the legal and institutional framework for U.S.-China trade, Chinese legislation governing foreign investment, joint venture considerations, and practical aspects of organizing and operating joint ventures in China.

II. LEGAL AND INSTITUTIONAL FRAMEWORK FOR U.S.-CHINA TRADE

U.S.-China trade relations, which had been frozen since 1950, began to develop again in the early 1970's following the Nixon Administration's opening to China. Through the 1970's, trade was erratic as grain shipments varied considerably from year-to-year. The breakthrough in trade came as a result of the decision by President Carter to establish full diplomatic relations with the PRC effective January 1, 1979.

The establishment of full diplomatic relations was quickly followed in 1979 by an agreement settling the long-standing dispute involving private U.S. claims against China and frozen Chinese assets in the United States and a bilateral Trade Agreement. By the end of 1980, trade relations had become virtually normalized, with the entry into force of the Trade Agreement as well as the signing of several additional agreements.

Trade Agreement and Trade Exhibitions Agreement—The Trade Agreement itself, which entered into force on February 1, 1980, forms the backbone of the institutional framework for U.S.-China trade. The Agreement provides for: the reciprocal extension of nondiscriminatory (most favored-nation or MFN) tariff treatment for imports from each country; protection of patents, copyrights and trademarks; procedures for the settlement of commercial disputes, including third country arbitration; and safeguards against market disruption. The Agreement also addresses issues related to the facilitation of business activities, the establishment of business and government trade offices and international financial, currency and banking transactions. At the same time that the Trade Agreement was initialed in May 1979, a separate Trade Exhibitions Agreement was signed. The first official activities under this Agreement were a U.S. National Exhibition, held in Beijing in November 1980, and a series of three Chinese exhibits held in the United States in the Fall of 1980.

Other Bilateral Agreements—On September 17, 1980, four additional bilateral agreements were signed in Washington by President Carter and Chinese Vice Premier Bo Yibo. The first of these was a Maritime Agreement designed to increase commerce by opening major U.S. and Chinese commercial ports to calls by the other country's flag vessels and to afford to U.S. flag vessels the opportunity to participate equally and substantially in carrying sea cargoes between the U.S. and China.

Under the terms of the Maritime Agreement, 55 U.S. ports are open to PRC flag vessels. In return, U.S. vessels are granted access to all 20 Chinese ports that are open to international ocean shipping. The objective that "a substantial share" of the trade between the two nations will be carried by each country's merchant marine is defined as meaning that national flag vessels of each nation will have the opportunity to carry not less than one-third of cargoes moving by sea between the two countries. This Agreement should contribute to U.S.-China trade by expediting the direct shipment of goods between the two countries.

At the same time, business travel to China should be made easier as a result of an Aviation Agreement that permits regularly scheduled airline links between the two countries. It allows each side to designate two official carriers, although China at this time has only one national airline, the Civil Aviation Administration of China (CAAC). In October 1980, the Civil Aeronautics Board designated Pan Am to be the first U.S. carrier to China. The second U.S. carrier, as yet undesignated, will be allowed to commence operations some time in the future. Both Pan Am and CAAC began U.S.-China airline service in January 1981.

The third agreement signed in September 1980 sets limits to certain Chinese textile exports to the U.S. This is an important agreement, since textiles are a particularly import-sensitive sector in the U.S. economy, and U.S. textile manufacturers have been concerned about growing imports from China over the past several years.

A fourth agreement, on consular matters, increases from two to five the number of consulates that each country may maintain in the other country. The agreement also establishes standards for the treatment of U.S. and Chinese citizens in each other's country.

Additional Trade Facilitating Developments

Eximbank—In the trade financing area, a Presidential Determination in April 1980 made the PRC eligible for Export-Import Bank programs. In May 1981, Eximbank and the Bank of China reached an operating agreement covering the extension of Eximbank programs to the People's Republic of China. Eximbank, which offers credit and guarantee programs to encourage U.S. exports, is now able to consider applications for loans to China on a case-by-case basis and has already approved several loans covering exports to

China. However, the Chinese have suggested that they consider Eximbank interest rates too high and it is an open question how much use they will make of the bank's facilities.

OPIC Agreement—On October 7, 1980, the Overseas Private Investment Corporation (OPIC) initialed an Investment Incentive Agreement with the China International Trust and Investment Corporation. The Agreement will facilitate political risk insurance coverage by OPIC of U.S. investment in China including joint ventures.

Export Controls—During a visit to the PRC in July 1981 by Secretary of State Haig, it was announced that the United States would be willing to consider the sale of military equipment to China on a case-by-case basis. In addition, the United States now has adopted a more liberal export control policy toward China with regard to dual-use and high technology items. Under the new policy there will be a presumption of approval for products with technical levels twice those previously approved. The Commerce Department in April 1980 had placed China in a separate country category, thus removing it from the category containing the U.S.S.R. and certain other communist countries. Then, in October 1980, revised licensing guidelines were issued that made it possible to export to China some goods and technology formerly prohibited, such as dual-use items.

The new policy announced in July 1981 also accords China preferential administrative treatment since all validated export licenses for China not requiring COCOM clearance will be processed by the Commerce Department. By not requiring interagency review, which is needed for U.S. exports to the U.S.S.R and certain other communist countries, the processing time for China cases should be reduced substantially. Detailed regulations spelling out the new policy were issued in December 1981, including a new advisory note which outlines about 30 items for which there is a presumption of approval. These include certain microprocessors, computers, oscilloscopes and communication equipment.

III. JOINT VENTURE CONSIDERATIONS

Foreign investment involves a wide variety of commercial complexities which depend on the political and business environment of the country where the investment takes place. Entering a joint venture in the People's Republic of China presents added uncertainties not only because the venture's Chinese shareholder is ultimately the State, but also because there has been little experience with joint collaboration with foreign firms. To understand the potential difficulties of a marriage between a private market-oriented enterprise and a State-owned and operated organization, some of the motivations of each should be considered.

Chinese Motivations—China's motivations for promoting joint ventures are:

—to obtain foreign technology, management, marketing expertise and capital, and by virtue of the long-term relationship of a joint venture, to assure that such technology and expertise is kept current and responsive to world market demands;

—to develop and promote joint research activities;

—to improve the country's trade balance by import substitution, export stimulation and diversification;

—to gain access to the marketing networks of the foreign partner and develop collaboration in third markets;

—to fulfill industrial needs, which are growing at a rapid rate, with minimal outlays of Chinese capital.

Generally, China plans joint ventures for projects that embody one or more of the following characteristics:

—projects requiring substantial fixed capital investment or advanced technology unavailable locally. Such projects are often aimed at industrial sectors, such as electronics, where China lags technologically behind the industrialized countries;

—projects for the manufacture of goods that fulfill China's domestic needs and which would otherwise have to be imported;

—export-oriented projects that upgrade local goods or raw materials and provide the venture with a positive convertible currency balance.

In addition, it is desired that a proposed joint venture contribute to the balanced development of China's foreign trade, industrialization and labor utilization requirements (i.e., labor-intensive joint ventures are encouraged).

Foreign Party Motivations—The foreign party's motivations for entering into a joint venture agreement in China's developing economy may include:

—the intent to forestall or reduce the competition of other firms operating in the same geographical area;

—assurance of a share in local market growth;

—the increased amount of control exercised by him over the enterprise's activities as compared to other forms of cooperation;

—market penetration in a potentially vast market with limited capital outlay as well as with sparing use of his own personnel;

—reduction of production costs or transportation costs to Southeast Asian markets;

—the availability of local unused factory capacity and a trainable, stable labor force;

—benefits connected with China's incentives programs to attract foreign investment (e.g., tax incentives).

For high technology companies that rely on constant improvement of their products, the joint venture may provide markets (within developing countries such as China) that can be adequately serviced, at least initially, by some of the companies' less advanced technology and products. It is up to the foreign party, who will have a vested interest in the commercial success of a joint venture, to convince the Chinese party of the desirable level of technology to be acquired by the joint venture.

Use of intermediate level technology in a joint venture may benefit both parties. The lower price of the technology may mean a higher investment equity share in the joint venture by the Chinese party. The technology may also be more suited to the labor-intensive conditions of China. For the U.S. party, the contribution of its intermediate level technology may provide the company with an additional return on an existing asset and on past investment in research and development.

On the other hand, the manufacture of highly sophisticated products embodying state-of-the-art technology requires considerable investment in the training of technicians and in the application of quality control measures. In such a case, despite China's lower wage rates, production costs of particular items may become as expensive there as in the Western countries.

The foreign party's investment considerations must also be evaluated by other factors, such as:

—prevailing corporate policies on investments in nonmarket economy countries such as China;

—any potential risks inherent in the Chinese market;

—the lengthy process of negotiating and constructing a viable commercial framework for the investment project in China;

—the cost of raising capital;

—the market's competitive pressure;

—other economic alternatives provided by return on a similar investment in other parts of the world.

After weighing the above considerations, the foreign party may wish to take a gradual approach to its involvement in China by initially considering less complex forms of cooperation, such as co-production (e.g., where one of the parties provides subassemblies or manufactured parts which are then assembled into the final product by the other party, payment occurring in either the product itself or cash) or licensing arrangements. These less complicated forms of cooperation avoid some of the problems arising from intimate long-term collaboration in an unfamiliar business environment.

Following the successful implementation of such limited cooperation efforts, the company may then escalate its involvement to the level of joint venture. The Chinese themselves are receptive to this gradual approach since it allows the two parties to adapt to each other's business outlook and to establish the viability of their targeted markets.

Additional Investment Considerations—The success of the joint venture will depend on many environmental and organizational factors. Included among the environmental factors are the local business climate, the potential of the targeted markets and the effect of competitive influences. Among the organizational factors are the form of association, the quality of management and the parties' concurrence in business objectives.

Additional clarification of its laws, regulations and long-term economic planning regarding the activities of joint ventures will be needed if China wants to attract more Western capital. Integration of the joint venture's production into the country's bilateral trade agreements with developing countries could also prove to be an inducement to Western investors. Several other factors which have contributed to the general hesitancy of U.S. businessmen to enter into joint ventures in China are described below.

While the joint company has as a stated aim the attainment of profits, differing concepts of profit in the parties' economic systems appear to be a main source of difficulty. In China, profit is viewed as mainly a return on capital investment rather than a blend which includes returns on such committed resources as management, technical services and marketing and a return for the adjustment necessary in existing or planned production capacity of the Western party. This has led to Chinese complaints about what they consider to be excessive profits for capital projects demanded by Western firms.

According to many Western businessmen, Chinese planners often fail to adequately evaluate the impact of new technology and products on their own economy, the potential of targeted markets (both domestic and export), the economies of scale of proposed manufacturing plants and the availability of materials supply. Also, the planned production and marketing goals of the Chinese party often conflict with the foreign party's aims of maintaining flexible production and marketing to conform to changing market conditions. Chinese dedication to steady annual economic growth, which is reflected in the production goals of individual plants and in the mentality of plant managers, fosters an inherently inelastic attitude whenever changes in plant output are desirable or even essential to conform to changes in the markets.

The sincerity of the Chinese party's efforts to make a joint venture a success is thwarted by the difficulty that Chinese personnel have in adapting themselves to new and unfamiliar situations. This has resulted in the Chinese overestimating on occasion their ability to perform. Furthermore, managers of Chinese enterprises are confronted by chronic gluts of unskilled labor and shortages of skilled labor. Provided with limited power to demote or fire personnel under his supervision, a Chinese manager faces the problem of how to overcome the low worker motivation and indifference resulting from the disruptive effects of the Cultural Revolution with fewer options than his Western counterpart.

To the above considerations must be added the slow pace of negotiations. This slow decision-making process can be explained by:

—the cautious attitude with which China approaches the subject of foreign investment within its boundaries;

—the constraints and method of operations of Chinese negotiators who are not risk-takers or entrepreneurs, but perform under strict guidelines;

—the time needed for Chinese experts to assimilate all the commercial implications and technical aspects of the venture;

—the bureaucratic delays inherent in China's planned economic system;

—the desire to reach the most favorable contract, which causes the Chinese to use protracted negotiations and plan-revisions as bargaining techniques.

IV. U.S. AND CHINESE LEGISLATION

Chinese Joint Venture Law

"The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment" was adopted by the Fifth National People's Congress on July 1, 1979 (see Appendix A). The law provides a generally broad framework for the rights and responsibilities of joint venture participants, leaving detailed terms of agreement to be spelled out by the parties in their contract of association.

The law encourages the formation of limited liability companies in which the foreign party contributes at least 25 percent of total equity, with the profits and losses of the venture shared between the participants in proportion to their equity. The after-tax profit share of the foreign party may be repatriated.

The chairman of the venture is chosen by the Chinese party and in all likelihood will be a Chinese national. The foreign party is expected to provide technology, capital equipment and machinery, marketing and management know how, technology and working capital. The Chinese will provide land, structures and installation. Tax allowances are provided for advanced technology and reinvestment. The law assumes the eventual existence of a Chinese civil commercial code, as well as patent, banking, insurance and other legislation. Various aspects of the law are analyzed in more detail in following sections as they pertain to the sections' contents.

Chinese Tax Laws

Joint Venture Tax Law—During the period between the enactment of the Joint Venture Law in July 1979 and the Joint Venture Tax Law in September 1980, there was much speculation as to what the tax on joint ventures would be, since this could determine the potential profitability of a joint venture. The tax rate actually adopted in the Joint Venture Tax Law (see Appendix B) is 30 percent of net income plus a local surtax of 10 percent for a total of 33 percent. An additional surtax of 10 percent is imposed on profits repatriated abroad.

The Joint Venture Tax Law does not resolve the question of whether the joint venture is also liable for other Chinese taxes, such as the industrial and commercial tax, which is a type of turnover tax. The following table lists several Chinese taxes that vary widely from one region to another and may affect joint venture operations.

SELECTED CHINESE DOMESTIC TAXES

Type of Tax Rate	Characteristic	Coverge	Description and Tax
Industrial and commercial consolidated tax	State tax adjusted locally	All enterprises and individuals	Different rate assessed on sales revenue of goods and services. For example, 5% tax rate for such production goods as equipment, machinery, electric power, pig iron, steel ingots, and 1.5% rate for cotton cloth. Rate for non-necessities is high: maximum 69% and minimum 40%.
Agricultural tax	Same as above tax	Agricultural production units	Proportionally assessed based on average annual crop produced. Tax rate differs according to region but averages 9.5% nationally.
Municipal land and building tax	Fixed percent of assets' value		Collected on building and land inside cities. 1.2% a year for buildings and 1.8% a year for land.
Vehicle and ship license fee	Same as above tax		Collected on ship vehicles and ships using public roads and domestic rivers and lakes. Assessed each quarter according to type of vehicle or ship.

Source: Xianggang Jingji Daobao (Hong Kong Economic Reporter) October 1, 1979

It should be noted that some joint ventures signed before the Joint Venture Tax Law went into effect had divergent tax provisions. The Chinese have apparently decided that in cases where the tax was set at a lower rate, it will remain at the lower rate during the lifetime of the joint venture contract; where it was set at a higher rate, it was to fall to the 30 percent basic level on January 1, 1981; where the joint venture contract did not mention the local surtax, it will not be assessed. These rules apply only to joint ventures actually approved before the new Joint Venture Tax Law became effective (September 10, 1980). Contracts signed but not approved before that date must accord with the new law.

Detailed regulations supplementing the Joint Venture Tax Law were promulgated in December 1980 (see Appendix C). These regulations fill in some of the gaps in the law by, inter alia, providing more precise definitions of terms and spelling out how taxable income is to be calculated. Accounting procedures covering items such as depreciation and the valuation of inventory are also detailed.

Individual Income Tax Law—At the same time that the Joint Venture Tax Law was promulgated, a new Individual Income Tax Law took effect (see Appendix D). While the tax applies to all residents of China, very few Chinese earn more than the 800 yuan (about $500) monthly income which is exempt from taxation. Therefore, the tax is obviously directed at foreigners resident in China. The tax on individuals is at progressive rates ranging from 5 to 45 percent on income from wages and salaries, with a flat rate of 20 percent for royalties, interest, and other types of income.

Implementing regulations on the Individual Income Tax Law clarify the tax liability of foreigners in China (see Appendix E). Nonresidents or individuals resident for less than one year are taxed only on income "gained" (presumably earned) within China. Those resident for 1 to 5 years are also taxed on that part of their income gained abroad that is actually remitted to China. After 5 years they are taxed on all their income gained abroad.

The regulations also define various categories of taxable income, spell out the function of witholding agents and clarify other technical matters left ambiguous in the Individual Income Tax Law itself.

Other Relevant Chinese Legislation

Labor Regulations—Regulations on Labor Management in Joint Ventures, issued in October 1980, address other issues that are of great concern to potential investors in China (see Appendix F). The Regulations appear to give the joint venture management a good deal of latitude in the hiring, training, disciplining and dismissal of workers. For example, local workers and staff may be either recommended by local authorities and agencies or recruited directly by the joint venture. In either case, however, the joint venture retains the right to hire its employees strictly on the basis of their qualifications.

The Regulations stipulate that the joint venture sign an overall labor contract with a trade union organization established within the joint venture, or, in the case of a small joint venture, sign individual labor contracts with its employees. The labor contract covers such matters as discipline, dismissal, wages, etc. The contract must then be approved by the labor management department of the provincial, regional, or municipal government. Matters dealing with the employment of foreigners by the joint venture are to be dealt with in separate employment contracts which apparently are not subject to approval by Chinese authorities.

Wage levels for local workers and staff of the joint venture are to be set at 120 to 150 percent of the level for similar employees of State-owned enterprises in the same trade that are located nearby, and may be paid directly to the joint venture's employees. Additionally, the Regulations govern the establishment of bonus and welfare funds by the joint venture. The joint venture is responsible for labor insurance, medical coverage and other workers' benefits normally provided by state-owned enterprises. Labor disputes are to be dealt with by consultations or arbitration, but recourse to courts of law is also available to a party dissatisfied with an arbitration result.

Joint Venture Registration Regulations—Regulations on the Registration of Joint Ventures, also issued in October 1980 (see Appendix G), detail the administrative steps that must be taken to register a joint venture with the Chinese General Administration for Industry and Commerce (GAIC). GAIC must issue the joint venture an operating license before its activities commence. The Regulations specify the documentation needed for registration and license issuance including, inter alia, the joint venture contract and articles of association and a registration form.

Formalities are also prescribed for registering changes in the structure or function of the joint venture as well as for the cancellation of a license upon termination of a joint venture.

Other New Laws and Legal Developments—In October 1980, the Chinese issued new regulations to formalize the procedure for the establishment of offices in China by foreign companies (see Appendix H). Up until then, such matters had been handled on an ad hoc basis, with many companies operating out of unofficial hotel-room offices. Under the new regulations, foreign companies must find a Chinese "sponsor," such as the Ministry of Foreign Economic Relations and Trade, to approve the establishment of a local office.

The regulations spell out the documentation that must be furnished in support of an application to open an office. After an approval has been granted, it must be registered with GAIC, the same organization that registers joint ventures. Firms that had previously received permission to set up offices in China apparently do not have to repeat the approval process, but were obliged to register with GAIC within 30 days from the date of promulgation of the regulations.

In April 1980, the Chinese put into effect a new system of foreign exchange certificates to be used by foreigners in China. The idea was to cut down on the use of the Chinese domestic currency by foreigners in an attempt to curb the growing black market. The foreign exchange certificates are issued only to foreigners and theoretically at least, are to be redeemable in most places frequented by foreigners, e.g., hotels, special hard currency "Friendship" stores, airline offices.

In December 1980, to strengthen central control on foreign exchange transactions, China issued Regulations for Exchange Control (see Appendix I)and established the State General Administration of Exchange Control to administer these controls. The Regulations designate the Bank of China as the sole specialized foreign exchange bank in the country. Additional implementing regulations were issued in August 1981 and January 1982 (see Appendices J, K, L).

In December 1981, the Chinese adopted an Economic Contract Law that is to govern commercial relations between domestic Chinese economic units (see Appendix M). The law sets forth basic principles for a number of different types of contracts, from purchase-sale agreements to insurance contracts. It is not clear whether the new law will apply to contracts between Chinese joint venture companies and other Chinese economic units. In any event, separate regulations governing foreign economic and trade contracts are to be promulgated following the same basic principles contained in the Economic Contract Law.

The Chinese are known to be actively working on several other new laws, including a patent law, a new trademark law to replace the present regulation and a company law. It is difficult to predict when these new laws will appear.

Special Economic Zones—In August 1980, detailed regulations were adopted governing the three Special Economic Zones (SEZ) in Guangdong province (see Appendix N). It is not clear whether the regulation will later be extended to the other zones or whether separate regulations covering them will be forthcoming. The new Regulations on Special Economic Zones in Guangdong Province call for the establishment of a Provincial Administrative Committee to manage them. The Committee has the duty of planning the development of the SEZ and has the responsibility for reviewing and approving individual investment projects. It also coordinates relations with other relevant Chinese organizations (banks, tax units, etc.) and assists in the recruitment of workers and staff for projects in the SEZ.

In addition to the Committee, the regulations call for the establishment of a Special Economic Zones Company, which appears to be the operational arm of the provincial government for investment in the SEZ. The Company is to, inter alia, operate enterprises and participate in joint ventures in the SEZ and act as agent for foreign traders in the SEZ in their relations with certain other Chinese organizations.

Investment in the SEZ will be given preferential treatment in several respects. Production equipment, raw materials and other items can be imported duty-free and tax rates are set at 15 percent, with special exemptions or reductions available under certain conditions. Profits and wages of foreigners may be repatriated under special foreign exchange regulations that have not yet been issued.

Four additional sets of regulations dealing with (1) entry and exit into and out of the zones, (2) business registration, (3) labor and wages and (4) land use in the Shenzhen SEZ were adopted by Guangdong provincial authorities in November 1981 (see Appendices O to R). In many respects, these regulations provide more liberal treatment for investors in the SEZ than for foreign parties involved in joint ventures uder the Joint Venture Law. For example, the foreign investor's personnel entering the SEZ from Hong Kong or Macao are entitled to multiple entry/exit visas. In the labor area, the regulations permit the foreign investor to advertise for employees, test them before hiring, and put new workers on probation for up to six months.

V. PRACTICAL ASPECTS OF ORGANIZING AND OPERATING JOINT VENTURES IN CHINA

Before forming the joint venture, the U.S. company should acquire an accurate picture of local market conditions and familiarize itself with any applicable Chinese legislation. Useful sources of information for this purpose are Western firms and banks active in the Chinese market, as well as Chinese sources such as the China International Trust and Investment Corporation, whose specific function is to facilitate foreign investment in China. Once there is a general agreement between the parties that a joint venture is desirable, a prolonged process of formalities and approvals is required to implement the joint company.

Legal and Organizational Aspects

The joint venture legislation provides that joint companies enjoy the status of legal entities in China. As such, joint ventures may sue and be sued, may operate under local laws and are responsible for their actions to the State. They are subject not only to the specific laws affecting joint companies but to all other legislation of China as well. Thus, in the absence of specific provisions to the contrary in the contract of association and joint venture statutes, Chinese laws will apply to the organization and operation of joint ventures.

Formation Requirements—To form a joint venture, the parties may draft a "memorandum of understanding" or umbrella agreement outlining the objectives of the venture. This preliminary document is an optional, legally non-binding and non-exclusive (as to other parties) statement recording reciprocal interest in a joint undertaking. It has no standardized form. It may consist of a simple exchange of letters indicating an intention to form a joint venture or even a general agreement on economic cooperation of which a joint venture is only one of several possible forms.

The memorandum of understanding is either followed or preceded by a written proposal submitted by the foreign party. The proposal identifies and describes the parties' expected contribution of assets, projected distribution of markets, preliminary estimates of the venture's economic viability and costs (the latter to allow the Chinese party to estimate equivalent costs within the local pricing system). It should preferably allow for:

- —Chinese preference to expand or modernize existing domestic manufacturing facilities;
- —substantial local procurement;
- —potential utilization of used machinery or equipment;
- —development of export markets through direct exports by the joint venture or through countertrade obligations assumed by the foreign party.

Following negotiations in which the parties arrive at a mutually agreeable understanding on the scope and purpose of the proposed joint venture, a feasibility study which details the planning, capitalization and viability calculations of the company to be established is outlined. (A comprehensive listing for feasibility study elements is shown in Appendix S). The proposal could be further developed in the contract of association, the statutes or by-laws of the joint company and any supplementary agreements (e.g., governing training, marketing and sales services, technology transfers, etc.). These are legally binding documents which define the responsibilities of the participants as well as the economic objectives and feasibility of the venture. Appendix T illustrates two examples of joint venture contracts.

The Chinese party next submits the joint venture documentation to the Foreign Investment Commission (FIC) for approval[1]. The FIC consults with all relevant ministries, including those supplying raw materials, and with the State Planning Commission which determines the compatibility of the venture's aims with national economic development plans. Upon approval by these parties, the joint venture is submitted to the State Council for final approval.

According to the Joint Venture Law, the entire approval process is not supposed to take more than three months. Upon final aproval, the joint venture formally comes into existence upon registration with the Chinese General Administration for Industry and Commerce, which grants it an operating license. Subsequent modifications in either the joint venture's contract of association or statutes must receive the approval of the FIC.

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[1] Under a reorganization plan announced in March 1982, the FIC has been merged into a new Ministry of Foreign Trade and Economic Relations. At publication time, it was not clear whether the FIC would remain a separate unit within the new ministry or would be totally absorbed into that body.

Beijing authorities charged with approval of foreign equity investments recognize their lack of experience in assessing long-range benefits accruing to the parties, especially the Chinese party, of joint companies. Hampered by limited staff resources, well aware of the country's lack of qualified management personnel and the small margin for economic or investment errors that can be afforded, these authorities have been more conservative in their scrutiny of joint ventures than either Chinese provincial authorities or commerical enterprises under regional jurisdiction. The latter have often proposed joint venture agreements without fully grasping the implications of such arrangements.

Once a decision has been reached by the prospective partners to form a joint company, it is important that the prospective foreign investor ensure that the FIC is kept apprised of their negotiations at an early stage, so as to avoid unanticipated surprises. Early direct contact with the FIC, in the form of courtesy or exploratory calls, may allow the foreign party to assess whether the proposed venture fulfills regional or national goals or is in competition for approval with other similar projects which might at the same time be under negotiation with other foreign investors.

The Contract—In China, where there is no developed body of commercial law, the careful drafting of the joint venture's contract of association, statutes and other agreements is imperative. These documents should spell out every forseeable detail of the proposed operations, yet still strive to retain a degree of flexibility to accommodate subsequent changes in the aims of the parties stemming from possible changes in market conditions or a reordering of corporate priorities. Detailed consideration should be given to:

—limitations on transfer and updating of technology; [2]

—rights to inventions developed by the joint company;

—acquisition of local or imported supplies;

—quality control responsibilities and procedures;

—independent auditing of the joint company records by the foreign firm or its designated representative;

—price formulations;

—qualification and selection requirements for local labor;

—selection of an arbitration site and governing law;

—force majeure provisions for acts by either party's government;

—distribution of profits derived from exports to hard and soft currency markets;

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[2] For example, limitations regarding sharing of information on design improvements of the joint venture's product, as compared to transfer of information on new products developed independently by the foreign party.

—language training, medical attention, duty-free import and transferral rights of goods as well as travel expenses and accommodations in China for the foreign personnel;

—disposition and/or recovery of costs of appliances and fixtures (when these become surplus) installed by the foreign party at his own costs to improve the lodgings of foreign personnel;

—entry and exit visa rights for local and foreign employees.

The contract of association should clearly define any fees and charges prescribed under Chinese law which relate to the activity of the joint venture, and it should address itself to the assessment of any future charges (e.g., allowing the joint venture to adjust its sales prices to accommodate the charges). The contract should also indicate who (i.e., the Chinese party, the foreign investor, or the joint venture itself) will be responsible for any such fees or charges.

The contract should also spell out the return on the foreign party's expected investment. This may be set at a flat percentage of profits over the entire period of joint ownership, or it may be time-varying with higher pay-backs occurring over the first few years of operation or it may provide for payment of royalties to the foreign party whenever the return on investment falls below a minimum specified threshold. In another variant, the foreign investor may be guaranteed a certain amount of the joint venture's production at agreed upon price formulations for a period of years.

The joint venture documents, once approved, become the only instrument of reference for all of the joint venture's operating decisions. The provisions within the documents should be written to allow subsequent revisions. Later amendment to contract clauses may be made by agreement of the investors with few formalities, provided these clauses have been worded appropriately to permit modification. For example, if production capacity is to be kept flexible to conform with changing market needs, the required conditions and implementing procedures for scaling (up or down) production output must be clearly spelled out in the documents. Basic restructuring of the documents or amendments through the addition of new clauses can be done, but the required approval process for such basic changes is time-consuming and involves ratification by the Chinese State Council.

Patents, Trademarks and Copyrights—China is not a member of the Convention of Paris for the Protection of Industrial Property (Paris Convention) nor does it have a patent or copyright law. At present, protection for inventions and technology in China is governed by the Regulation on Awards for Inventions and Regulation on Awards for Technical Improvements" approved in December, 1978. Under these regulations, the State claims ownership of all inventions and technology and establishes a system of validation and financial rewards. Although foreigners can theoretically qualify for these financial rewards; basic protection of their inventions and technology rests for the time being in Chinese adherence to contractual terms. The Chinese are at work developing a system of patent protection which would allow them to join the Paris Convention.

Trademark registration in China is handled by the China Council for the Promotion of International Trade. Duration of the mark registration is unlimited for local enterprises and is valid for renewable 10-year periods for foreign enterprises.

The 1979 Trade Agreement between the U.S. and China recognizes the importance of protecting patents, trademarks and copyrights. In article VI of the Agreement, the signatories recognize, on the basis of reciprocity, the right of nationals of each country to apply for trademark registration in the territory of the other. Each country obliges itself to provide, in accordance with national laws and regulations and with due regard to international practice, equivalent protection of patents, trademarks and copyrights of the other country's legal or natural persons equivalent to the protection accorded by the other country. Protection of these rights in contracts, including restrictions on unfair competition, is also endorsed.

Main Chinese organizations involved with Joint Ventures [3]

Foreign Investment Commission (FIC)[3]—The principal tasks of the FIC are screening and approval of joint ventures and oversight of export-import matters. FIC is charged with the approval of investments above $5 million in the municipalities of Shanghai, Beijing, and Tianjin and the province of Liaoning, and above $3 million in other provinces. There are no ceilings on investment size in the provinces of Guangdong and Fujian. FIC is also responsible for formulating laws and regulations pertaining to foreign investment. In reviewing joint venture applications, FIC takes into consideration the principle of mutual benefit of the parties (i.e., restrictive clauses on a joint venture's imports or exports may be unacceptable), the level and applicability of the foreign technology to Chinese needs and the technology's price.

China International Trust and Investment Corporation (CITIC)—CITIC's function is to facilitate foreign investment in China. Headed by Rong Yiren, CITIC has branches in several cities in China and an office in Hong Kong. The corporation, which operates as a profit and loss center, may act as an agent for either the Chinese or foreign party in a joint venture (typical fees range from 0.5 to 5 percent according to project size), or may take a minor equity position in the joint venture. CITIC also involves itself in technology transfers, may act as a trustee for foreign investment funds or as a guarantor for foreign loans and may also compile project feasibility studies for foreign clients. Under China's policy of increasing local foreign trade autonomy, provincial and municipal authorities are developing their own foreign investment organizations under local jurisdiction. These are patterned on CITIC (e.g., the Shanghai and the Tianjin Investment and Trust Corporations, organized to oversee and assist foreign investment in those two municipalities).

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[3] As mentioned on page 19, the FIC has been merged into a new Ministry of Foreign Trade and Economic Relations.

Bank of China (BOC)—BOC reports directly to the State Council and operates as the country's sole foreign exchange bank. The Bank provides necessary foreign currency funds to Chinese enterprises. Through its headquarters in Beijing and branch offices throughout China, it handles the foreign currency transactions and accounts of joint ventures, can extend hard currency loans to the venture and may, with concurrence of the State Council, guarantee loans obtained by the venture from foreign banks.

Agricultural Bank of China (ABC)—ABC is under the supervision of the People's Bank of China, China's central bank. It specializes in financing farm sector projects and would be involved in financing the Chinese partner of an agricultural joint venture.

People's Construction Bank of China (PCBC) —Although directly subordinate to the State Council, PCBC is supervised by both the Ministry of Finance and the State Capital Construction Commission[*]. Under recent directives, PCBC is to disburse a greater share of State investment funds than in past years to Chinese commercial enterprises, both for technical renovation and for new production capacity. The capital construction interest-bearing loans, which may finance Chinese contributions to a joint venture project, carry an average interest rate of 5 percent.

People's Investment Bank (PIB)—PIB was formed in December 1981 with the assistance of the World Bank to channel foreign capital for China's investment and credit needs. PIB, capitalized at 4 billion yuan, will be operating as an independent legal and financial entity and will be responsible for its own profits and losses. The new bank is already administering the funding of World Bank-financed projects and will be borrowing funds in the international market to finance other domestic projects. It can also grant loans to, or take part in, joint equity ventures with foreign parties.

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[*] Under the March 1982 Chinese Government reorganization, the State Capital Construction Commission has been abolished.

People's Insurance Company of China (PICC)—PICC, which supervises all of China's insurance operations, is a special agency of the State Council and operates under the jurisdiction of the Ministry of Finance. The company provides insurance policies on political risk, marine risks, general trade risks (including compensatory trade) and covers performance bonding, fire and automobile accidents. PICC also insures foreign property in China as well as the activities and investment of joint ventures. It has recently formed an insurance joint venture in Bermuda with the American International Group of New York. The new company, China America Insurance Company Ltd., will provide trade coverage insurance and participate in reinsurance business.

Investment and Commercial Aspects

Joint ventures must be capitalized at least 25 percent by the foreign investor, although no upper limit for foreign investment is set. Contributions to subscribed capital can be in the form of convertible currency, equipment, civil engineering, construction work, technology, know-how, or other rights and obligations. The Chinese contribution may include any real estate utilized by the joint venture (otherwise, the joint venture must pay rent for the property to the State). Financial contributions to the joint venture by the foreign party are to be in convertible currency. Contributed funds are to be placed in the joint venture's account in a bank, usually the Bank of China.

Negotiations—Negotiation meetings in China cover normal business hours during the day, with a break for lunch. Prospective investors will find the Chinese to be straightforward, usually skilled negotiators and thorough on details. Yet, the pace of negotiations is often slowed down by the unfamiliarity of most Chinese officials and translators with English technical terms and expressions. It is therefore most useful that a Chinese-speaking representative of the foreign party participate in the negotiation process in order to gauge Chinese reactions and assess the accuracy of translations.

The Chinese negotiators expect the foreign party to provide them with the basic information on the viability of the venture, including export projections, required supplies of raw materials and cost analyses based on Western production standards. These are used to estimate equivalent costs within the Chinese pricing system. In evaluating the feasibility of a joint manufacturing plant, the U.S. firm is well advised to investigate at an early stage of the negotiations the availability of electric power and any contemplated local sourcing of raw materials and supplies for the plant.

When repeated visits by the Western company are necessary, the Chinese may use several of their negotiators in a sequential mode as a means to educate their technical personnel by compelling the Western party to restate and reexplain information to new groups of technical people. This approach as well as the request for revised proposals may also be used by the Chinese negotiators as a technique for brain-picking.

Valuation of Parties' Contributions—The valuation of each party's contributions is established in the currency agreed upon in the company contract. The value of assets other than cash contributed by the Chinese party is determined by using "world-market" prices. The valuation of these prices does not reflect the real social and labor costs but is based on estimated price levels in convertible currency for "typical" foreign markets. The selection criteria for the typical markets should be specified during negotiations to arrive at a realistic value for the Chinese contribution, and thus at a mutually agreeable equity investment between the parties.

For example, the pricing of the Chinese labor and real estate contributions to the joint venture will reflect an estimated world (e.g., Hong Kong) market value in convertible currency discounted so as to attract foreign investment. The real estate pricing will also reflect considerations as to the property's location, the displacement value for any existing buildings or cultivated areas on the property, the availability of utilities, etc.

A common problem recurring during preliminary negotiations involves forecasting costs associated with the joint venture's operations and the Chinese contribution to the joint venture. This problem results from the difficulty in determining costs incurred in China. In pricing the foreign party's technology contribution to the joint venture, Chinese negotiators may argue that the technology costs have been recovered in prior sales and, therefore, the technology should be provided to the joint venture at a substantial discount. The Western party's counterargument that technology costs include any improvements over the life of the contract has been resisted by the Chinese, since the value of such future benefits is difficult to prove at the time of negotiations.

When the Chinese party has primary responsibility for construction of a new plant, he may request that escalating costs associated with the construction be included as part of his equity contribution. The joint venture's contract of association should address itself to this issue and to other issues, such as leasing of foreign machinery and equipment if it is advantageous to the joint company.

The Transfer of Technology and Know-How—The Chinese have traditionally viewed technology as an asset only insofar as it is embodied as an integral part of equipment or production facilities.

Indeed, some Chinese ministries have stated that in pricing Chinese capital equipment for export, technology represents only about 2 to 3 percent of the total cost charged to the foreign customer. Opinions on the merits of providing state-of-art technology as part of the U.S. party's contribution to the joint venture vary among U.S. firms. Many U.S. firms spend a sizable portion of sales income on research and only part of it results in marketable technology. Since few Chinese (or developing country) firms are prepared to pay commensurate royalties over the life of the plant to get desired technologies, some U.S. firms feel that the joint venture approach corresponds to technology sales at discount prices.

Assuming that a decision has been made to transfer technology under the auspices of a joint venture, additional problems in transferring it may occur. An important aspect of any joint venture between a U.S. and a foreign firm may be the effect of the U.S. Export Administration Act of 1979 on either the technological contributions of the U.S. party to the joint company's equity or to the company's resultant product. While both parties may agree that the U.S. party should provide its technology to the joint venture (in the form of know-how and licenses, or embodied in machinery and related equipment), U.S. export controls may limit, or prevent in particular cases, such transfer. Since a significant part of the U.S. company's initial contribution to the joint company may be technology or technologically sophisticated products, the U.S. party should seek preliminary advisory opinions from the U.S. Department of Commerce's Office of Export Administration (OEA) to determine whether problems might arise in obtaining the necessary OEA export license. The party's unfounded assurances to the Chinese during negotiations that these controlled items are obtainable can be damaging if the license applications are later denied or if extended delays occur in obtaining license approvals.

A more difficult situation arises when the parties decide on a production scheme which does not involve export license problems at the time the joint company is formed but which, because of the nature of production, will result in the need for a license at a later time. Then, due to changes in the long range plan of the joint venture, either new sensitive product lines are introduced or the production schedule for the more sophisticated products is advanced, so as to raise export control problems (either with the product to be sold itself or with the supplies and subparts necessary for manufacture).

For high technology joint ventures, a similar situation might arise if the joint venture's products, for which licenses had been obtained, suddenly become noncompetitive or obsolete in export markets. In such a case, the joint venture may be forced to introduce more advanced versions of the same product or shift to manufacturing a different line of products. Either of these actions could require applying for a new export license which may or may not be approved.

The problem in these examples could be very serious because both parties may have made substantial capital investments in the joint venture. In such a situation, Chinese pressure on the U.S. party to obtain the appropriate export licenses would be considerable and, of course, failure to obtain these vital licenses could result in the collapse of the joint venture. Therefore, the U.S. firm and its Chinese counterpart should develop, as part of the contract of association, a series of production options which will allow flexibility and avoid such potentially troublesome export control problems.

A U.S. firm engaged in classified work for the U.S. Government should be aware that its security clearances for such work may become an issue if it seeks a joint venture in China. Department of Defense security regulations prohibit a person engaged in representing a Communist entity from having a top secret clearance. It can readily be assumed that in a joint venture U.S. company officials and executives may be assigned to the venture's Management Committee or Administrative Council. Since the potential joint venture would be a Chinese corporate entity under Chinese law, the U.S. security clearances of the executives and officers of the American company as well as its corporate clearance may be placed in jeopardy.

The Role of Countertrade—Although most existing compensatory trade in China does not occur through joint venture arrangements, the converse is likely to be sure: a majority of joint venture arrangements will probably involve counterdeliveries to the foreign investor of goods manufactured by the joint company. As with most compensatory trade, these deliveries will involve processing or assembly of products using exclusively or partially machinery, equipment, components, technology or know-how supplied to the joint venture by the foreign investor.

In 1978, Chinese draft legislation was prepared to regulate compensatory trade, whether or not it occurs under joint venture auspices. Following internal debates, Chinese authorities decided at that time to actively engage in "direct" compensatory trade whereby acquisition by existing Chinese plants of Western machinery, materials, know-how and technologies would be compensated for by exports derived from processing finished goods or components in these refurbished plants. It was intended that such trade would contribute to the modernization of 350,000 obsolescent small and medium Chinese industrial enterprises. "Indirect" compensatory trade, whereby the Western exporter receives payment in goods which are not related to his export, was not to be favored or facilitated by national organizations.

The Chinese are now waiting to accumulate sufficient experience with the draft legislation directives prior to issuing them as law. During the present trial phase, domestic regulation allows tax rebates for equipment, goods and materials imported or exported under a direct compensatory arrangement. The Chinese party to the compensatory transaction further benefits from the retention of a portion of the hard-currency earnings.

China's countertrade arrangements are monitored and regulated by a Bureau of Compensatory Trade within the Import-Export Commission. The Import-Export Commission, which drafted the proposed legislation on countertrade, is charged with approving import-export transactions above $3 million if undertaken by municipalities and above $1 million if undertaken by all provinces except Guangdong and Fujian, which do not require approval [a].

Subcontracting and local supply availability—An important measure of the joint venture's operating efficiency in the eyes of the Chinese is the extent to which the supplies used by it are of local origin. The joint venture law states that domestic procurement of supplies and raw materials for the joint company's operations should be given first priority, but allows foreign procurement. For production ventures, careful consideration has to be given in the joint company's contract of association to the timely procurement of supplies and spare parts. Foreign purchases of specific raw materials and parts could be handled, on behalf of the joint venture, by the foreign party for the first few years under subcontract. A clause specifying procurement from alternate sources should be included in the venture's contract.

Market Development—A primary concern of both parties is making inroads in each other's markets without compromising their established positions in their own markets. But, while the Chinese enterprise expects the foreign investor to modernize the joint venture's production and, at the same time, to create new export markets for its products; it often can offer in return only limited prospects in its domestic market. This can be attributed to the lack of marketing perspectives of industrial enterprises operating in a planned economy environment where the supplier doesn't set supply or price levels and the consumer doesn't set demand levels.

Production goals of enterprises in China are set by administrative rather than customer dictates and conform to virtually guaranteed market outlets and sales. This has eliminated the need for aggressive marketing initiative and has reduced the enterprises' sales operations to clerical work involving little more than shipping and billing of goods. In addition to traditional production and management difficulties, sales efforts of Chinese enterprises also have been hampered by poor marketing methods and information, by distribution problems resulting from the country's inadequate infrastructure and by regional protectionism by authorities who want to safeguard manufacturers under their jurisdiction.

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[a] It is not clear whether these functions will now be performed by the new Ministry of Foreign Trade and Economic Relations, into which the Import-Export Commission has been merged.

As part of the new economic outlook, the Chinese Government has begun to grant some enterprises the right to choose competitively their own suppliers and has tasked them with the responsibility to find on their own customers for larger portions of their output. To foster competition among the country's manufacturers, China is now experimenting on a limited scale with previously forbidden practices, such as partial profit retention by enterprises, credit extension, competitive pricing and advertising.

Given the Chinese participant's limited awareness of, and expertise in, Western marketing methods and, at the same time, the potential for market expansion introduced by the new initiatives, it is likely that any estimates of projected domestic market shares supplied by the Chinese participants in the joint venture will be conservative. This might require an independent assessment of domestic market projections by the foreign investor.

Pricing—To allow for changing market conditions, flexible pricing criteria should be negotiated. The pricing formulation may be established in the contract of association of the joint venture and, as previously noted, would be approved by the State Council. Thus, the formula must be expressed in terms and conditions that allow maximum flexibility, since later changes in the formulation would require high level approval.

Since the joint venture will undoubtedly procure part of its raw material needs, services, or other supplies in China, the Western party should know how the Chinese domestic price system works to negotiate favorable terms of procurement.

Chinese domestic prices within each industrial sector are fixed by State authorities to cover the average cost of goods (i.e., materials, utilities, wages and social taxes, depreciation, research and development, etc.), plus an approved profit. Factories can price their products at less than the established price but not at more. Upward price adjustments occur rarely and are allowed only when underlying conditions (e.g., cost of raw materials, changed national standards for a particular product) justify the adjustment. The Industrial and Commercial Consolidated Tax (see table on page 13) is also levied on products sold to the ultimate consumer. Higher profit mark-ups are usually approved for capital intensive industries to provide for internal financing, capital repairs and expansion.

Commodities used by production units which are allocated by the State (e.g., agricultural commodities, coal, iron ore, steel, chemicals, etc.) carry fixed prices. Prices of commodities controlled by the provinces are fixed by mutual agreement among the provinces, while small collectives negotiate the price of their production with the factories that purchase them.

Financial aspects

Hard currency operations of a joint venture fall under the control of the Bank of China, which may also handle all the venture's financial transactions. The Bank of China can provide hard currency funds for joint ventures although joint ventures are permitted by the Joint Venture Law to source such funds abroad.

Currency and Banking—The Chinese currency is the renminbi and its unit is the yuan. The exchange rate, published daily by the State General Administration for Exchange Controls, was 1.945 yuan per U.S. dollar as of August 31, 1982. This rate is based on a basket of 24 other internationally traded currencies and is changed whenever the rate diverges from the previously published rate by 0.5 percent. This rate applies to all transactions which are not related to international trade and for settlements with nonresidents (such as tourists).

Effective January 1, 1981, China announced a new internal settlement rate of 2.8 yuan per U.S. dollar applicable to foreign trade transactions. This rate, which was introduced in early 1980 on an experimental basis for selected enterprises, applies now to all Chinese enterprises whenever they buy foreign exchange from, or surrender it to, the Bank of China. The rate also applies to trade-related invisible transactions such as shipping and insurance. Enterprises which earn excess foreign exchange through a retention quota system (which sets forth the amount of foreign currency the enterprise is allowed to retain) are allowed to sell it to other foreign trade enterprises on a spot basis using the Bank of China as a broker. Adoption of the internal settlement rate for the joint venture's transactions can be negotiated in the contract of association.

Commercial credit is prohibited in China. Financial loans to industrial and commercial enterprises are made on the basis of plans and are guaranteed by the enterprises' marketable goods or commodities. These loans carry an annual interest rate of 5.04 percent. Preferential interest rates, ranging from 2.2 to 4.3 percent, are extended to agricultural enterprises.

Interest can be earned on deposited funds. The current annual interest rate on deposits of Chinese industrial enterprises is 1.8

percent. The same rate applies to special accounts for the enterprises' welfare and bonus fund accounts. Local currency deposits of Chinese nationals living abroad carry preferential interest rates. Interest rates of a joint venture's foreign exchange funds deposited with the Bank of China may be negotiable.

Accounting Practices—The responsibility of financing and establishing economic targets for the majority of Chinese enterprises rests with the State or regional authorities.

The accounting office of a typical enterprise handles accounts receivable, accounts payable, cost calulations and transactions with the People's Bank of China. The accounting office compiles daily records of receivables and receipts, payables and payments, cash and bank and detailed accounts. These transactions are recorded in a general ledger which is used together with other detailed accounts to make up the general accounting statements.

A comptroller office handles the administration of fixed capital, construction and current assets and funds payroll and any other special funds. A cost accounting section or internal bank unit processes records of material, financial and service transactions between the enterprise's various workshops and departments. This section records the transactons of each department as "income" and "expenditures" on profit and loss statements. The statements are the basic internal cost accounting documents for allocated assets. They form the justification for distribution of bonuses within the enterprise.

Fixed asset costs of Chinese enterprises are set by the State to conform throughout the country. Useful life of machinery goes far beyond the limits of most Western enterprises. Depreciation of fixed assets is specified by law and follows the straight line method. Fixed assets are depreciated only when in productive use.

If they remain in use after they are fully depreciated, Chinese enterprises are allowed to continue depreciation deductions on the assets and, at the end of the year, are entitled to a portion of the depreciated costs as investment capital. Before 1978, depreciation funds were fully retained by enterprises. Since then, the State has required that 50 percent of these funds be remitted for its budget.

The fixed assets price of the joint venture investment is the price agreed upon contractually by the parties to the joint venture, and it is used for depreciation calculations. Useful life for computing depreciation of fixed assets is set by the Joint Venture Tax Law (see Appendix C) and varies from 20 years for buildings to 5 years for electronic equipment. Accelerated depreciation rates or modified methods of depreciation need the approval of the Ministry of Finance.

No specific accounting and bookkeeping provisions are included in the Joint Venture Law, but the Chinese require that the venture, as a domestic company subject to the country's regulations, abide by local practices. The foreign investor may negotiate the right to compile a supplementary ledger which will conform to Western accounting practice. He should also negotiate in the contract of association any rights for independent auditing.

The Tax System—The Joint Venture Tax Law defines taxable income of a joint venture as the net income in a tax year after deduction of costs, expenses and losses in that year (see Appendix B). The income tax rate on joint ventures, except those exploiting natural resources, is 33 percent, including a local surtax of 10 percent. A 10 percent income tax is levied on repatriated profits, while profit shares reinvested in China for 5 years or more entitle the investor, upon approval of tax authorities, to a refund of 40 percent of the income tax paid on the reinvested amount. Joint ventures may, upon approval of tax authorities, be exempted from income tax in the first profit-making year and allowed a 50 percent tax reduction in the next 2 years. Losses incurred by a joint venture in a tax year may be carried forward for 5 tax years.[*]

A new tax directed at foreign residents in China was issued in 1980 (see Appendix D). The law states that for individuals not residing in China or residing in China for less than one year, individual income tax shall be levied only on the income gained within China. Individuals residing in China for one to five years shall pay tax only on that part of their income gained abroad which is remitted to China; individuals residing in China for more than five years shall pay tax in addition on all their income gained outside China from the sixth year of residence. Income from wages and salaries in excess of 800 yuan shall be taxed at progressive rates ranging from 5 to 45 percent. Other income from compensation for personal services, royalties, interest, dividends, bonuses and lease of property shall be taxed at a rate of 20 percent.

Western companies may negotiate in their association contract exemption from duties on imports of equipment, machinery, spare parts and other supplies necessary to the joint company's operations.

Wages and Social Insurance—Levels and escalation clauses for wages of the joint venture's Chinese personnel are established by the contract of association and, according to new regulations (see Appendix F), are set at 120 to 150 percent of real wages of workers of State-owned enterprises of the same trade in the area. Wages are likely to average between 150 and 200 yuan per month. Of this sum, about 40 percent will represent labor wages and the difference will be allocated to the employee's social (health insurance, pension) and housing costs.

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[*] In 1981, China issued a Foreign Enterprise Income Tax Law which covers foreign companies doing business in China. This law doesn't apply to joint ventures and therefore is not discussed in this publication.

To compare labor cost of joint ventures and local enterprises, it is useful to understand the wage system in China. Basic wages which Chinese enterprises pay are determined by the central Government. Factory workers are paid according to an eight grade wage structure ranging between 33 and 100 yuan per month with minor variations reflecting regions, factory size and type of ownership. Technicians (grade 9) and engineers (grade 10) are compensated according to individual ability but their wages do not differ substantially from those of the workers they supervise (their average monthly wage is typically 60 to 70 yuan). Bonuses and fringe benefits and subsidies to offset retail price increases are paid in addition to the basic wage.

Bonus methods vary among production plants and may reflect fulfillment of quotas within standard times, individual work output, consumption rate of materials used, hours worked and collective cooperation among work groups. Based on the bonus plan calculations, an average bonus per worker could add 20 to 23 yuan per month to the factory workers's wage.

Managerial aspects

Because of its minority position and the characteristics of China's commercial environment, the foreign party may find it difficult to exercise effective control over the management of the joint venture.

Control of the Joint Venture's Activities—Establishing and regulating the operations policies of the joint venture rests with the Board of Directors. The Board's decisions include approval of the balance sheet and auditing, the method of calculating and distributing profits, the remuneration and responsibilities of managers, production and market planning and hiring or appointing of company officers. The Board is also responsible for the settlement of labor and disciplinary disputes between the joint venture and the trade union organization. If a solution is not found, the disputing parties may lodge a request for arbitration with the locality's Labor Management Department prior to filing suit in local court.

The Board Chairman is required by law to be selected by the Chinese party. Seats on the Board of Directors are allocated in the same proportion as equity. The statutes of the joint venture determine how Board decisions are to be reached. For example, the statutes may require that for important decisions of the Board, the majority vote include that of one non-Chinese member.

A Management Committee is responsible for day-to-day operations and reports to the Board of Directors. The selection criteria for the officers of the committee is left to be stipulated in the contract of association or statutes of the joint venture.

Role of Chinese Personnel—The foreign investor may attempt to ensure quality standards for the joint venture by:

—negotiating the right to introduce his own qualified personnel in key management and supervisory positions;

—requiring a voice in the selection and hiring of Chinese personnel;

—requiring that selected Chinese personnel be trained to U.S. standards and be subsequently tied to long-term employment contracts to discourage the transfer of qualified people to other industrial facilities; and

—specifying available means for recourse in the event of nonperformance or delays on the part of the Chinese party.

In the latter case or when planning or establishing production time schedules for joint venture personnel, the foreign investor should be aware that Chinese labor productivity and utilization will differ markedly from those of U.S. labor.

Chinese workers suffer from lack of incentives and often don't have sufficient education or the experience required for the job. Many owe their employment to political or personal connections that are not related to their job qualifications. On the other hand, Chinese managers of industrial factories usually have had considerable experience in production work, have risen through the industrial bureaucracy and often the political apparatus and are primarily devoted organization men. Industrial objectives have been set for them by the State, but implementation is their responsibility. Thus, Chinese managers are not trained, independent decision-makers but tend to be quota-oriented and may adapt themselves with some difficulty to any innovations in established methods that could delay temporarily the meeting of prescribed goals.

Role of Foreign Personnel—Because of the difficulty which Chinese personnel have in adapting to Western managerial and production practices, it is likely that during the initial stages of joint cooperation the foreign personnel, although assigned to line responsibilities, will serve as a talent pool occupied mostly in an advisory capacity.

Of potential concern is the degree to which the objectives of the foreign and Chinese parties continue to coincide during future years of the joint venture's operations. The joint venture, as an integral part of China's economy, will seek to identify, through its management body, its goals and plans with the interests of the host country. This may cause problems for the venture's foreign personnel whenever these goals and plans are not consistent with those of the foreign company.

Dispute Resolution

As a matter of practice, Chinese contracts traditionally did not contain provisions for third country arbitration of commercial disputes. The emphasis has been on friendly negotiations between the two parties and, if necessary, arbitration before the Chinese Foreign Economic and Trade Arbitration Commission. However, in recent years, Chinese contracts increasingly have contained clauses permitting arbitration in third countries. Switzerland and Sweden are most common, but Canada, Singapore, and others have been used in U.S.-China commercial contracts. In a few cases, the Chinese have even accepted the use of third country law to govern the contract.

Under the terms of the U.S.-China Trade Agreement, both sides agreed that:

> "If disputes cannot be settled promptly . . . through friendly consultations, or conciliation or other mutually acceptable means, the parties to the dispute may have recourse to arbitration for settlement in accordance with provisions specified in their contracts or other agreements to submit to arbitration. Such arbitration may be conducted by an arbitration institution in the People's Republic of China, the United States of America, or a third country. The arbitration rules of procedure of the relevant arbitration institution are applicable, and the arbitration rules of the United Nations' Commission on International Trade Law recommended by the United Nations, or other international arbitration rules, may also be used where acceptable to the parties to the dispute and the arbitration institutions. (Article 8)."

The Joint Venture Law reiterates in Article 14 that dispute resolution "by an arbitral body of China or . . . an arbitral body agreed upon by the parties" is acceptable.

Despite their recent increased flexibility on this issue, Chinese organizations still strongly prefer to resolve disputes by amicable discussions between the parties or through a conciliator. Although such methods of dispute resolution may be frustrating and time-consuming, they are probably preferable to formal methods such as arbitration, especially in the light of the continuing relationship inherent in a joint venture.

Dissolution and Liquidation

The Chinese Joint Venture Law does not go into detail on procedures for dissolution and liquidation of the assets of a joint venture. In fact, the only mention of the subject is in Article 13 of the Law, which simply states that the joint venture may be terminated before its specified date of expiration "by consultation and agreement between the parties and through authorization by the Foreign Investment Commission . . . and registration with the General Administration for Industry and Commerce."

Actual joint venture agreements approved by the FIC have contained more extensive termination provisions that cover the rights and obligations of the parties on dissolution. Typically included are buy-out provisions which determine how to calculate the interests of the party being bought out (i.e., normally the foreign partner at the conclusion of the joint venture term).

APPENDIX A

THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON JOINT VENTURES USING CHINESE AND FOREIGN INVESTMENT

Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979 and formally issued and made effective on July 8, 1979.

Article 1. With a view to expanding international economic cooperation and technological exchange, the People's Republic of China permits foreign companies, enterprises, other economic entities or individuals (hereinafter referred to as foreign participants) to incorporate themselves, within the territory of the People's Republic of China, into joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as Chinese participants) on the principle of equality and mutual benefit and subject to authorization by the Chinese government.

Article 2. The Chinese government protects, by the legislation in force, the resources invested by a foreign participant in a joint venture and the profits due him pursuant to the agreements, contracts and articles of association authorized by the Chinese government as well as his other lawful rights and interests.

All the activities of a joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China.

Article 3. A joint venture shall apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties to the venture and the articles of association of the venture formulated by them, and the commission shall authorize or reject these documents within three months. When authorized, the joint venture shall register with the General Administration for Industry and Commerce of the People's Republic of China and start operations under license.

Article 4. A joint venture shall take the form of a limited liability company. In the registered capital of a joint venture, the proportion of the investment contributed by the foreign participant(s) shall in general not be less than 25 percent.

The profits, risks and losses of a joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital.

The transfer of one party's share in the registered capital shall be effected only with the consent of the other parties to the venture.

Article 5. Each party to a joint venture may contribute cash, capital goods, industrial property rights, etc. as its investment in the venture.

The technology or equipment contributed by any foreign participant as investment shall be truly advanced and appropriate to China's needs. In cases of losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for the losses.

The investment contributed by a Chinese participant may include the right to the use of a site provided for the joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese participant, the joint venture shall pay the Chinese government for its use.

The various contributions referred to in the present article shall be specified in the contracts concerning the joint venture or in its articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

Article 6. A joint venture shall have a board of directors with a composition stipulated in the contracts and the articles of association after consultation between the parties to the venture, and each director shall be appointed or removed by his own side. The board of directors shall have a chairman appointed by the Chinese participant and one or two vice-chairmen appointed by the foreign participant(s). In handling an important problem, the board of directors shall reach decision through consultation by the participants on the principle of equality and mutual benefit.

The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the joint venture, all fundamental issues concerning the venture, namely, expansion projects, production and business programs, the budget, distribution of profits, plans concerning manpower and pay scales, the termination of business, the appointment or hiring of the president, the vice-president(s), the chief engineer, the treasurer and the auditors as well as their functions and powers and their remuneration, etc. The president and vice-president(s) (or the general manager and assistant general manager(s) in a factory) shall be chosen from the various parties to the joint venture.

Procedures covering the employment and discharge of the workers and staff members of a joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture.

Article 7. The net profit of a joint venture shall be distributed between the parties to the venture in proportion to their respective shares in the registered capital after the payment of a joint venture income tax on its gross profit pursuant to the tax laws of the People's Republic of China and after the deductions therefrom as stipulated in the articles of association of the venture for the reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

A joint venture equipped with up-to-date technology by world standards may apply for a reduction of or exemption from income tax for the first two or three profit-making years.

A foreign participant who re-invests any part of his share of the net profit within Chinese territory may apply for the restitution of a part of the income taxes paid.

Article 8. A joint venture shall open an account with the Bank of China or a bank approved by the Bank of China.

A joint venture shall conduct its foreign exchange transactions in accordance with the foreign exchange regulations of the People's Republic of China.

A joint venture may, in its business operations, obtain funds from foreign banks directly.

The insurance appropriate to a joint venture shall be furnished by Chinese insurance companies.

Article 9. The production and business programs of a joint venture shall be filed with the authorities concerned and shall be implemented through business contracts.

In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., a joint venture should give first priority to Chinese sources. It may also acquire them directly from the world market with its own foreign-exchange funds.

A joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through direct channels or its associated agencies or China's foreign trade establishments. Its products may also be distributed on the Chinese market.

Whenever necessary, a joint venture may set up affiliated agencies outside China.

Article 10. The net profit which a foreign participant receives as his share after executing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the joint venture terminates or winds up its operations, and his other funds may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations and in the currency specified in the contracts concerning the joint venture.

A foreign participant shall receive encouragements for depositing in the Bank of China any part of the foreign exchange which he is entitled to remit abroad.

Article 11. The wages, salaries or other legitimate income earned by a foreign worker or staff member of a joint venture, after payment of the personal income tax under the tax laws of the People's Republic of China, may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations.

Article 12. The contract period of a joint venture may be agreed upon between the parties to the venture according to its particular line of business and circumstances. The period may be extended upon expiration through agreement between the parties, subject to authorization by the Foreign Investment Commission of the People's Republic of China. Any application for such extension shall be made six months before the expiration of the contract.

Article 13. In cases of heavy losses, the failure of any party to a joint venture to execute its obligations under the contracts or the articles of association of the venture, ***force majeure,*** etc. prior to the expiration of the contract period of a joint venture, the contract may be terminated before the date of expiration by consultation and agreement between the parties and through authorization by the Foreign Investment Commission of the People's Republic of China and registration with the General Administration for Industry and Commerce. In cases of losses caused by breach of the contract(s) by a party to the venture, the financial responsibility shall be borne by the said party.

Article 14. Disputes arising between the parties to a joint venture which the board of directors fails to settle through consultation may be settled through conciliation or arbitration by an arbitral body of China or through arbitration by an arbitral body agreed upon by the parties.

Article 15. The present law comes into force on the date of its promulgation. The power of amendment is vested in the National People's Congress.

APPENDIX B

THE INCOME LAW TAX OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING JOINT VENTURES WITH CHINESE AND FOREIGN INVESTMENT

Adopted at the Third Session of the Fifth National People's Congress, on August 26, 1980 and formally issued and made effective on September 10, 1980.

Article 1. Income tax shall be levied in accordance with this Law on the income derived from production, business and other sources by any joint venture with Chinese and foreign investment (hereinafter called joint venture for short) in the People's Republic of China.

Income tax on the income derived from production, business and other sources by branches within or outside the territory of China of such joint venture shall be paid by their head office.

Article 2. The taxable income of a joint venture shall be the net income in a tax year after deduction of costs, expenses and losses in that year.

Article 3. The income tax rate on joint ventures shall be 30%. In addition, a local surtax of 10% of the assessed income tax shall be levied.

The income tax rates on joint ventures exploiting petroleum, natural gas and other resources shall be stipulated separately.

Article 4. In the case of a foreign participant in a joint venture remitting its share of profit from China, an income tax of 10% shall be levied on the remitted amount.

Article 5. A newly established joint venture scheduled to operate for a period of 10 years or more may, upon approval by the tax authorities of an application filed by the enterprise, be exempted from income tax in the first profit-making year and allowed a 50% reduction in the second and third years.

With the approval of the Ministry of Finance of the People's Republic of China, joint ventures engaged in such low-profit operations as farming and forestry or located in remote, economically under-developed outlying areas may be allowed a 15-30% reduction in income tax for a period of 10 years following the expiration of the term for exemptions and reductions mentioned in the preceding paragraph.

Article 6. A participant in a joint venture which reinvests its share of profit in China for a period of not less than five years may, upon approval by the tax authorities of an application filed by the said participant, obtain a refund of 40% of the income tax paid on the reinvested amount. A participant which withdraws its reinvested funds within five years shall pay back the tax amount refunded.

Article 7. Losses incurred by a joint venture in a tax year may be carried over to the next tax year and made up with a matching amount drawn from that year's income. Should the income in the subsequent tax year be insufficient to make up for the said losses, the balance may be made up with further deductions against income year by year over a period not exceeding five years.

Article 8. Income tax on joint ventures shall be levied on an annual basis and paid in quarterly installments. Such provisional payment shall be made within 15 days after the end of each quarter. The final settlement shall be made within 3 months of the end of a tax year. Excess payments shall be refunded by the tax authorities or deficiencies made good by the taxpayer.

Article 9. Joint ventures shall file their provisional income tax returns with the local tax authority within the period prescribed for provisional payments. The taxpayer shall file its final annual income tax return together with its final accounts within 3 months of the end of the tax year.

Article 10. Income tax levied on joint ventures shall be computed in terms of Renminbi (RMB). Income in foreign currency shall be assessed according to the exchange rate quoted by the State General Administration of Exchange Control of the People's Republic of China and shall be taxed in Renminbi.

Article 11. When joint ventures go into operation or when they change the nature of their business, change their address, close down, and make changes in or transfer registered capital, such joint ventures shall register with the General Administration for Industry and Commerce of the People's Republic of China, and within 30 days of such registration, present the relevant certificates to the local tax authority for tax registration.

Article 12. The tax authorities have the right to investigate the financial affairs, account books and tax situation of any joint venture. Such joint venture must make reports according to the facts and provide all relevant information and shall not refuse to co-operate or conceal the facts.

Article 13. A joint venture must pay its tax within the prescribed time limit. In cases of failure to pay within the prescribed time limit, the appropriate tax authority, in addition to setting a new time limit for tax payment, shall surcharge overdue payments at one half of one percent of the overdue tax for every day in arrears, starting from the first day of default.

Article 14. The tax authorities may, acting at their discretion, impose a penalty on any joint venture which has violated the provisions of articles 9, 11 and 12 of this Law.

In dealing with any joint venture which has evaded or refused to pay tax, the tax authorities may, in addition to pursuing the tax, impose a penalty of not more than five times the amount of tax underpaid or not paid, according to the seriousness of the offense. Cases of gross violation shall be handled by the local People's Courts according to law.

Article 15. In cases of disputes with tax authorities about tax payment, joint ventures must pay tax according to the relevant regulations first before applying to higher tax authorities for reconsideration. If they do not accept the decisions made after such reconsideration, they can bring the matter before the local People's Courts.

Article 16. Income tax paid by a joint venture or its branch in other countries may be credited against the assessed income tax of the head office as foreign tax credit.

Where agreements on avoidance of double taxation have been concluded between the Government of the People's Republic of China and the government of another country, income tax credits shall be handled in accordance with the provisions of the related agreements.

Article 17. Detailed rules and regulations for the implementation of this Law shall be formulated by the Ministry of Finance of the People's Republic of China.

Article 18 This Law shall come into force from the date of promulgation.

APPENDIX C

DETAILED RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE INCOME TAX LAW OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING JOINT VENTURES WITH CHINESE AND FOREIGN INVESTMENT

Approved on December 10, 1980 by the State Council and promulgated by the Ministry of Finance on December 14, 1980.

Article 1. The Detailed Rules and Regulations are formulated in accordance with the provisions of Article 17 of the Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment (hereinafter called Tax Law for short).

Article 2. "Income derived from production and businesses" mentioned in Article 1 of the Tax Law refers to income from the production and business operations in industry, mining, communications, transportation, agriculture, forestry, animal husbandry, fisheries, poultry farming, commerce, tourism, catering, service and other trades.

"Income from other sources" mentioned in Article 1 of the Tax Law covers dividends, bonuses, interest and income from lease or transfer of property, patents, technical know-how, trade-mark interests, copyright and other items.

Article 3. "A local surtax of 10 percent of the assessed income tax" as mentioned in Article 3 of the Tax Law refers to a surtax to be computed and levied on the basis of the actual amount of the income tax paid by joint ventures.

Reduction or exemption of the local surtax on account of special circumstances shall be decided by the people's government of the province, municipality or autonomous region in which the joint venture is located.

Article 4. A foreign participant in a joint venture, who wants to remit its share of profits from China, shall report to the local tax authorities; the remitting agency shall withhold an income tax of 10 percent on the remitted amount. No tax shall be levied on that part of its share of profits which is not remitted from China.

Article 5. "The first profit-making year" as mentioned in Article 5 of the Tax Law refers to the year in which a joint venture has begun making profit after the losses, if any, in the initial stage of its operation have been made up in accordance with the provisions of Article 7 of the Tax Law.

Article 6. A participant in a joint venture, who reinvests its share of profit in this enterprise or in other joint ventures with Chinese and foreign investment for a period of not less than five years in succession, may receive a refund of 40 percent of the income tax already paid on the reinvested amount by presenting the certificate of the enterprise accepting such investment for examination and approval of the tax authorities to which the tax was paid.

Article 7. The tax year for joint ventures starts from January 1 and ends on December 31 on the Gregorian calendar.

Article 8. The taxable income shall be calculated in accordance with the following formulae:

1. Industry:
   a. Production costs of the year = direct materials used up in production of the year + direct wages + manufacturing expenses.
   b. Cost of the product of the year = inventory of product semi-finished and in process of production at the beginning of the year + production costs of the year - inventory of products semi-finished and in process of production at the end of the year.
   c. Cost of the sales of the product = cost of the product of the year = inventory of the product at the beginning of the year - inventory of the product at the end of the year.
   d. Net sales of the product = gross sales of the product - (sales return + sales allowance).
   e. Profit from Sales of the product = net sales of the product - tax on sales -cost of sales - (selling expenses + administrative expenses).
   f. Taxable income = profit from sales of the product + profit from other operations + non-business income - non-business expenditure.
2. Commerce:
   a. Net sales = gross sales-(sales return + sales allowance).
   b. Cost of sales = inventory of merchandise at the beginning of the year + (purchase of the year - (purchase returned + purchase discount) + purchase expenses) - inventory of merchandise at the end of the year.
   c. Profit of sales = net sales - tax on sales - cost of sales - (selling expenses + overhead expenses).
   d. Taxable income = profit of sales + profit from other operations + non-business income - non-business expenditure.
3. Service trades:
   a. Net business income = Gross business income-(tax on business + operating expenses + overhead expenses).
   b. Taxable income = Net business income + non-business income - non-business expenditure.
4. Other trades: For other trades, refer to the above-mentioned formulae for calculation.

Article 9. The following items shall not be counted as cost, expense of loss in calculating the taxable income:.

1. Expenditure on the purchase of construction of machinery, equipment, buildings, facilities and other fixed assets;
2. Expenditure on the purchase of intangible assets;
3. Interest on equity capital;
4. Income tax payment and local surtax payment;
5. Penalty for illegal operations and losses in the form of confiscated property;
6. Overdue payment and tax penalty;
7. Losses from windstorms, floods and fire covered by insurance indemnity;

8. Donations and contributions other than those for public welfare and relief purposes;
9. That part of the entertainment expenses for operating purposes above the quota of 3 thousandths of gross sales or above the quota of 10 thousandths of gross business income in the tax year and those entertainment expenses that are not relevant to production and operations.

Article 10. Depreciation of fixed assets of joint ventures in use shall be calculated on an annual basis. The fixed assets cover houses, buildings, machinery and other mechanical apparatuses, means of transport and other equipment for the purpose of production with useful life of more than one year. But articles with a per-unit value of less than 500 yuan and shorter useful life, can be itemized as expenses according to the actual quantity in use.

Article 11. Fixed assets shall be assessed according to the original value. For fixed assets counted as an investment, the original value shall be the price of the assets agreed upon by all participants at the time of investment.

For purchased fixed assets, the original value shall be the purchase price plus freight, installation expenses and other related expenses incurred before they are put into use.

For self-made and self-built fixed assets the original value shall be the actual expenditures incurred in the course of manufacture or construction.

Article 12. In calculating depreciation of fixed assets, the residual value shall be assessed first and deducted from the original value, the principle being making the residual value about 10 percent of the original value; those assets to retain a lower or no residual value, shall be submitted for approval to the local tax authorities.

Depreciation on fixed assets shall generally be computed in average under the straight-line method.

Article 13. The depreciation period for various kinds of fixed assets is set as follows:

1. The minimum depreciation period of houses and buildings is 20 years;
2. The minimum depreciation period of trains, ships, machines and equipment and other apparatuses for the purpose of production is 10 years;
3. The minimum depreciation period for electronic equipment and means of transport other than trains and ships is 5 years.

   For cases where the depreciation on fixed assets of joint ventures, owing to special reasons, needs to be accelerated or to be computed under modified methods, applications shall be submitted by the said ventures to the local tax authorities for examination and then relayed level by level to the Ministry of Finance of the People's Republic China for approval.

Article 14. Expenditures arising from technical innovation and resulting in the increase of value of fixed assets in use, shall not be listed as expenses.

For the fixed assets remaining in use after the full depreciation period, no depreciation shall be allowed.

Article 15. The balance of the proceeds that joint ventures receive from the disposal of fixed assets at the current price, after the net unamortized value or the residual value of the assets is deducted, shall be entered into the profit and loss account for the current year.

Article 16. Intangible assets such as technical know-how, patents, trade-mark interests, copyright, right to use sites and other franchise counted as investment, shall be amortized on the basis of the assessed value as provided in the agreements or contracts from the year they come into use; as the intangible assets that are bought in at a price, the actual payment shall be assessed and amortized from the year they come into use.

The above-mentioned intangible assets with the provision of time limit for use, shall be assessed and amortized according to the time limit; those without such provision shall be assessed and amortized in a period of ten years.

Article 17. Expenses arising during the period of preparation for a joint venture shall be amortized after it goes into production or business, the amount amortized each year not exceeding 20 pecent of the expenses.

Article 18. Inventory of merchandise, raw materials, products in process of production, semi-finished products, finished products and by-products shall be valued according to the cost price. For the method of computation, the joint ventures may choose one out of the following: first-in first-out, shifting average and weighted average. In case a change in the method of computation is necessary, it shall be submitted to the local tax authorities for approval.

Article 19. Income tax to be paid in quarterly installments as prescribed in Article 8 of the Tax Law may be computed as one-fourth of the planned annual profit for the current year or of the actual income in the preceding year.

Article 20. Joint ventures shall file their income tax returns and final accounting statements with the local tax authorities within the prescribed period irrespective of making profit or loss in the tax year, and shall send in at the same time the audit certificate of the chartered public accountants registered in the People's Republic of China.

The accounting statements submitted by the branches of joint ventures within China to their head offices shall be submitted to the local tax authorities at the same time for reference.

Article 21. Joint ventures shall file tax returns within the time limit set by the Tax Law. In case of failure to submit the tax returns within the prescribed time limit owing to special circumstances, application should be submitted to the local tax authorities within the said time limit, and the time limit may be appropriately extended upon the latter's approval.

The final day of the time limit for tax payment and filing tax returns may be extended if it falls upon an official holiday.

Article 22. Income of joint ventures in foreign currencies shall be assessed according to the exchange rate quoted by the State General Administration of Exchange Control on the day when the tax payment certificates are made out, and shall be taxed in Renminbi.

Article 23. The revenue and expenditure of joint ventures shall in principle be accounted on accrual basis. All accounting records shall be accurate and complete, and shall have lawful vouchers as the basis for entries.

Article 24. The method of financial management and accounting of joint ventures shall be submitted to the local tax authorities for reference.

When the method of financial management and accounting of joint ventures contradicts the provisions of the Tax Law, the tax payments shall be assessed according to the provisions of the Tax Law.

Article 25. Accounting vouchers, books, statements and reports adopted by joint ventures shall be made in the Chinese language or in both Chinese and foreign languages.

Accounting vouchers, books, statements and reports shall be kept for at least 15 years.

Article 26. Forms of sales invoice and business receipt shall be submitted for approval to the local tax authorities before they are used.

Article 27. Officials sent by tax authorities when investigating the financial, accounting and tax affairs of a joint venture, shall produce identification cards and undertake to keep secret.

Article 28. Tax authorities may impose a penalty of 5,000 yuan or less on a joint venture which has violated the provisions of Articles 9, 11 and 12 of the Tax Law according to the seriousness of the case.

Article 29. Tax authorities may impose a penalty of 5,000 yuan or less on a joint venture which has violated the provisions of paragraph 2 of Article 25, and Article 26 of the Detailed Rules and Regulations.

Article 30. Tax authorities shall serve notices on relevant parties for cases involving penalty in accordance with the relevant provisions of the Tax Law and the Detailed Rules and Regulations.

Article 31. When a joint venture applies for reconsideration in accordance with the provisions of Article 15 of the Tax Law, the tax authorities concerned are required to make decisions within three months after the application is received.

Article 32. Income tax paid to foreign authorities by a joint venture or its branches on their income received outside China may be credited against the amount of income tax to be paid by their head office upon presenting the foreign tax payment certificate. But the credit amount shall not exceed the tax payable on the income received abroad computed according to the tax rate prescribed by China's Tax Law.

Article 33. Income tax returns and tax payment certificate for joint ventures are to be printed by the General Taxation Bureau of the Ministry of Finance of the People's Republic of China.

Article 34. The right of interpreting the Detailed Rules and Regulations resides in the Ministry of Finance of the People's Republic of China.

Article 35. The Detailed Rules and Regulations come into force from the same date as the "Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment".

APPENDIX D

INDIVIDUAL INCOME TAX LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Adopted by the Third Session of the Fifth National People's Congress and formally issued and made effective on September 10, 1980.

Article 1. An individual income tax shall be levied in accordance with the provisions of this Law on the incomes gained within or outside China by any individual residing for one year or more in the People's Republic of China. For individuals not residing in the People's Republic of China or individuals residing in China less than one year, individual income tax shall be levied only on that income gained within China.

Article 2. Individual income tax shall be levied on the following categories of income:

1. Wages and salaries;
2. Compensation for personal services;
3. Royalties;
4. Interest, dividends and bonuses;
5. Income from lease of property; and
6. Other kinds of income specified as taxable by the Ministry of Finance of the People's Republic of China.

Article 3. Individual income tax rates:

1. Income from wages and salaries in excess of specific amounts shall be taxed at progressive rates ranging from 5 percent to 45 percent (see appended tax rate table).
2. Income from compensation for personal services, royalties, interest, dividends, bonuses and lease of property, and other kinds of income shall be taxed at a flat rate of 20%.

Article 4. The following categories of income shall be exempted from individual income tax:

1. Prizes and awards for scientific, technological or cultural achievements;
2. Interest on savings deposits in the state banks and credit co-operatives of the People's Republic of China;
3. Welfare benefits, survivors' pensions and relief payments;
4. Insurance indemnities;
5. Military severance pay, decommission or demobilization pay for cadres and fighters of the armed forces.

6. Severance pay or retirement pay for cadres, staff members and workers;
7. Salaries of diplomatic officials of foreign embassies and consulates in China;
8. Tax-free incomes as stipulated in international conventions to which China is a party or as stipulated in agreements China has signed;
9. Incomes approved as tax-free by the Ministry of Finance of the People's Republic of China.

Article 5. The amount of taxable income shall be computed as follows:

1. For income from wages or salaries, a monthly deduction of 800 yuan shall be allowed; that part in excess of 800 yuan shall be taxed.
2. For income from compensation for personal services, royalties or lease of property, a deduction of 800 yuan shall be allowed for expenses if the amount in a single payment is less than 4,000 yuan; for single payments in excess of 4,000 yuan a deduction of 20% shall be allowed. The balance remaining after deduction shall be taxed.
3. Interest, dividends, bonuses or other kinds of income shall be taxed on the full amount received in each payment.

Article 6. For individual income tax, the income earner shall be the party responsible for paying the tax and the paying unit shall be the withholding agent. Taxpayers not covered by withholding are required personally to file declarations of their income and pay tax themselves.

Article 7. Taxes withheld each month by a withholding agent and those to be paid each month by taxpayers filing personal returns shall be turned in to the state treasury and the tax return submitted to the tax authority within the first seven days of the following month.

Any taxpayer who earns income outside China shall pay the tax due to the state treasury and submit a tax return to the tax authority within 30 days of the end of each year.

Article 8. All incomes shall be computed in terms of Renminbi (RMB). Income in foreign currency shall be assessed according to the exchange rate quoted by the State General Administration of Foreign Exchange Control of the People's Republic of China, and shall be taxed in Renminbi.

Article 9. The tax authorities have the right to conduct investigations concerning the payment of tax. Withholding agents and taxpayers filing personal returns must report according to the facts and provide all relevant information and shall not refuse or conceal the facts.

Article 10. A commission of 1% of the tax amount withheld shall be paid to the withholding agents.

Article 11. A withholding agent or a taxpayer filing personal returns must pay the tax due within the prescribed time limits. In cases of failure to pay within the prescribed time limits, the appropriate tax authority, in addition to setting a new time limit for tax payment, shall surcharge overdue payments at one half of one percent of the overdue tax for every day in arrears, starting from the first day of default.

Article 12. The tax authorities may, acting at their discretion, impose a penalty on a withholding agent or on a taxpayer filing personal returns who has violated the provisions of Article 9 of this Law.

In dealing with those who have concealed income or evaded or refused to pay tax, the tax authorities may, in addition to pursuing the tax, impose a penalty not more than five times the amount of tax underpaid or not paid, according to the seriousness of the offense. Cases of gross violation shall be handled by the local People's Courts according to the law.

Article 13. In case of disputes with the tax authorities over the payment of taxes, the withholding agent or taxpayer filing personal returns must pay taxes according to the relevant regulations first before applying to higher tax authorities for reconsideration. If they do not accept the decisions made after such reconsideration, they can bring the matter before the local People's Courts.

Article 14. Detailed rules and regulations for the implementation of this Law shall be formulated by the Ministry of Finance of the People's Republic of China.

Article 15. This Law shall come into force from the date of promulgation.

INDIVIDUAL INCOME TAX RATES
(Applicable to wages and salaries)

Grade	Range of Income	Tax Rate (%)
1	Monthly income of 800 yuan and less	Exempt
2	That part of monthly income from 801 yuan to 1,500 yuan	5
3	That part of monthly income from 1,501 yuan to 3,000 yuan	10
4	That part of monthly income from 3,001 yuan to 6,000 yuan	20
5	That part of monthly income from 6,001 yuan to 9,000 yuan	30
6	That part of monthly income from 9,001 yuan to 12,000 yuan	40
7	That part of monthly income above 12,000 yuan	45

APPENDIX E

DETAILED RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE INDIVIDUAL INCOME TAX LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Approved by the State Council on December 10, 1980 and promulgated by the Ministry of Finance on December 14, 1980.

Article 1. The Detailed Rules and Regulations are drawn up in accordance with the provisions of Article 14 of the Individual Income Tax Law of the People's Republic of China (hereinafter called Tax Law for short).

Article 2. 'Any individual residing for one year or more in the People's Republic of China' mentioned in Article 1 of the Tax Law refers to any individual who resides in China for a full 365 days of a tax year. No subtractions shall be made therein of the number of days of temporary absence from Chinese territory within the tax year.

A tax year starts from January 1 and ends on December 31 on the Gregorian Calendar.

Article 3. Individuals who reside in the People's Republic of China for one year or more but not exceeding five years shall pay tax only on that part of their income received outside China which is remitted to China; individuals whose residence in China exceeds five years shall pay tax on all their income received outside China from the sixth year of residence.

Article 4. The contents of the various categories of income mentioned in Article 2 of the Tax Law are as follows:

1. "Wages and salaries" refers to wages, salaries, bonuses and year-end extras earned from work in offices, organizations, schools, enterprises, undertakings and other entities.

   Bonuses mentioned in the preceding paragraph do not include prizes and awards for scientific, technological or cultural achievements.

2. "Remuneration for personal services" refers to earnings from personal services in designing, installation, drafting, medical treatment, law practising, accounting, consultation, lecturing, news reporting, broadcasting and television contributions to publications, translation, calligraphy and painting, sculture, cinema, drama and opera, music, dancing, acrobatics, ballad singing and comic talk, sports and technical services.

3. "Royalties" refers to income from the provision and transfer of patents, copyright, the right to use technical know-how and other rights.

4. "Interest, dividends and bonuses" refers to interest on deposits, loans and various kinds of securities and dividends and bonuses from investments.

5. "Income from lease of property" refers to income from lease of houses, machinery and equipment, motor vehicles and ships, and other kinds of property.
6. "Other kinds of income" refers to income specified as taxable by the Ministry of Finance of the People's Republic of China other than those provided in the preceding items.

Article 5. The following categories of income from sources within the territory of China, regardless of whether the place of payment is within China or not, shall be taxed according to the Tax Law:

1. Individual income earned from work and services done within China. But, for individuals whose continuous residence in China does not exceed 90 days, the above remuneration paid by employers outside China may be exempted from taxation.
2. Dividends and bonuses received within China by any individual. But dividends and bonuses derived from Joint Ventures with Chinese and foreign investment and from urban and rural co-operative organizations shall be exempt from taxation.
3. Remuneration of staff members sent to work abroad by governmental offices at all levels of the People's Republic of China.

Article 11. Remuneration for personal services, royalties and income from lease of property received within China by individuals not residing in China shall be taxed on the full amount of such income.

Article 12. "Income from remuneration for personal services, royalties or lease of property" "in a single payment" mentioned in Article 5 of the Tax Law refers to the income on one single occasion or the income earned for performing one single piece of work, and the amount so received is counted as a single payment. For consecutive income from the same item that cannot be divided into separate payments, such income received within one month is counted altogether as a single payment.

Article 13. For the same item of income received by two or more individuals in collaboration, deduction for expenses, if eligible according to the Tax Law, may be made from each one's share separately.

Article 14. The withholding agents in making various kinds of taxable payments shall withhold the taxes according to the Tax Law, turn them into the State Treasury in time and put them in itemized records for future reference.

The various kinds of taxable payments referred to in the preceding paragraph include payments in cash, payments by remittance, payments through transfer accounts and payments in marketable securities or in kind, which are rendered into equivalent amounts of money.

Article 15. Withholding agents and taxpayers filing personal returns shall submit tax returns within the time limit prescribed by the Tax Law. In case of failure to submit the returns within the prescribed time limit on account of special circumstances, applications for extension shall be submitted within the prescribed time limit to the local tax authorities for approval.

The final day of the time limit for tax payment and submission of tax returns may be extended if it falls upon an official holiday.

Article 16. For individuals residing in China for one year or more, the income received outside China shall be calculated and taxed separately from the taxable income earned within China. The amount of taxes shall be assessed after deducting expenses for different categories of income as provided in Article 5 of the Tax Law.

Income tax paid to foreign authorities by taxpayers for income earned outside China may be credited against the amount of income tax assessed according to the tax rate prescribed by the Tax Law of China on applications by presenting the relevant tax payment certificate.

Article 17. Individual income in foreign currencies shall be assessed according to the exchange rate quoted by the State General Administration of Exchange Control on the day when the tax payment certificate is made out, and shall be taxed in Renminbi.

Article 18. Individuals liable to pay income tax in China who desire to leave the country are required to pay off the tax to the local tax authorities seven days before departure from China, and only then can they go through exit formalities.

Article 19. In conducting investigations concerning the payment of tax by withholding agents or taxpayers filing personal returns, the officials sent by tax authorities shall produce identification cards and undertake to keep secret.

Article 20. For the commission of 1 percent payable to the withholding agents as provided in Article 10 of the Tax Law, the local tax authorities shall make out refund notice for the withholding agents on the monthly basis in accordance with the actual amount of tax withheld, and the withholding agents may go through refunding formalities at the designated banks.

Article 21. Any withholding agent or taxpayer filing personal returns who has violated the provisions of Article 9 of the Tax Law shall be penalized 500 yuan or less by the tax authorities according to the seriousness of the case.

Article 22. Any withholding agent or taxpayer filing personal returns who has violated the provisions of Articles 14 and 15 of the Detailed Rules and Regulations, shall be penalized 500 yuan or less by the tax authorities.

Article 23. The tax authorities shall serve notices on relevant parties for cases involving penalty in accordance with the relevant provisions of the Tax Law and the Detailed Rules and Regulations.

Article 24. For cases applied for reconsideration by a withholding agent or a taxpayer filing personal returns according to the provisions of Article 13 of the Tax Law, the tax authorities concerned are required to make decisions within three months after the application is received.

Article 25. Tax returns and tax payment certificates for the individual income tax are to be printed by the General Taxation Bureau of the Ministry of Finance of the People's Republic of China.

Article 26. The right of interpreting the Detailed Rules and Regulations resides in the Ministry of Finance of the People's Republic of China.

Article 27. The Detailed Rules and Regulations come into force from the same date as the "Individual Income Tax Law of the People's Republic of China."

APPENDIX F

REGULATIONS ON LABOR MANAGEMENT IN JOINT VENTURES USING CHINESE AND FOREIGN INVESTMENT

Adopted at the Fifteenth Session of the National People's Congress Standing Committee and formally issued and made effective on August 26, 1980.

Article 1. Labor management problems concerning joint ventures using Chinese and foreign investment (hereinafter referred to as joint ventures) should be handled in accordance with the regulations, in addition to the pertinent stipulations in article 6 of the "Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment."

Article 2. Matters pertaining to employment, dismissal and resignation of the workers and staff members, tasks of production and other work, wage and awards and punishment, working time and vacation, labor insurance and welfare, labor protection and labor discipline in joint ventures shall be stipulated in the labor contracts signed.

A labor contract is to be signed collectively by a joint venture and the trade union organization formed in the joint venture. A relatively small joint venture may sign contracts with the workers and staff members individually.

A signed labor contract must be submitted to the labor management department of the provincial, autonomous regional or municipal people's government for approval.

Article 3. The workers and staff members of a joint venture either recommended by the authorities in the locality in charge of the joint venture or the labor management department, or recruited by the joint venture itself with the consent of the labor management department, should all be selected by the joint venture through examination for their qualification.

Joint ventures may run workers' schools and training courses for the training of managerial personnel and skilled workers.

Article 4. With regard to the surplus workers and staff members as a result of changes in production and technical conditions of the joint venture, those who fail to meet the requirements after training and are not suitable for other work can be discharged. However, this must be done in line with the stipulations in the labor contract and the enterprise must give compensation to these workers.

The dismissed workers and staff members will receive assignments for other work from the authorities in charge of the joint venture or the labor management department.

Article 5. The joint venture may, according to the degree of seriousness of the case, take action against those workers or staff members who have violated rules and regulations of the enterprise that result in certain bad consequences. Punishment by discharges must be reported to the authorities in charge of the joint venture and the labor management department for approval.

Article 6. With regard to the dismissal and punishment of workers and staff members by the joint venture, the trade union has the right to raise an objection if it considers them unreasonable, and send representatives to seek a solution through consultation with the board of directors. Should the consultation fail to arrive at a solution, the matter will be handled in accordance with the procedures set forth in Article 14 of the present regulations.

Article 7. When workers and staff members of a joint venture, on account of special conditions, submit resignation to the enterprise through the trade union in accordance with the labor contract, the enterprise should give its consent.

Article 8. The wage level of the workers and staff members in a joint venture will be determined at 120 to 150% of the real wages of the workers and staff members of state-owned enterprises of the same trade in the locality.

Article 9. The wage standards, the forms of wages paid, and bonus and subsidy systems are to be discussed and decided upon by the board of directors.

Article 10. The bonuses and welfare funds drawn by the joint venture from the profits must be used as bonuses, awards and collective welfare and should not be misappropriated.

Article 11. A joint venture must pay for the Chinese workers' and staff members' labor insurance, cover their medical expenses and various kinds of government subsidies in line with the standards prevailing in state owned enterprises.

Article 12. The employment of foreign workers and staff members and their dismissal, resignation, pay, welfare and social insurances and other matters concerned should all be stipulated in the employment contracts.

Article 13. Joint ventures must implement the relevant rules and regulations of the Chinese Government on labor protection and ensure safety in production and civilized production. The labor management department of the Chinese Government is authorized to supervise and inspect their implementation.

Article 14. Labor disputes occurring in a joint venture should first of all be solved through consultation by both parties. If consultation fails to arrive at a solution, either party or both parties may request for arbitration by the labor management department of the people's government of the province, autonomous region or municipality where the joint venture is located. Either party that disagrees to the arbitration may file a suit at the People's Court.

Article 15. The right of interpretation of the present regulations belongs to the State Bureau of Labor of the People's Republic of China.

Article 16. The regulations come into force on the date of its promulgation.

APPENDIX G

REGULATIONS ON THE REGISTRATION OF JOINT VENTURES USING CHINESE AND FOREIGN INVESTMENT

Adopted at the Fifteenth Session of the National People's Congress Standing Committee and formally issued and made effective on August 26, 1980.

Article 1. The present regulations are worked out in accordance with stipulation laid down in the "Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment" and for the purpose of registering such ventures to protect their legitimate operations.

Article 2. A joint venture using Chinese and foreign investment should, within one month after being approved by the Foreign Investment Commission of the People's Republic of China, register with the General Administration for Industry and Commerce of the People's Republic of China.

The General Administration for Industry and Commerce authorizes the administrative bureaus for industry and commerce in the provinces, municipalities and autonomous regions to register joint ventures using Chinese and foreign investment in their localities. Licenses for operations shall be issued to the said joint ventures after examination by the General Administration for Industry and Commerce of the People's Republic of China.

Article 3. In applying for registration, a joint venture using Chinese and foreign investment should produce the following documents:

1. The document of approval issued by the Foreign Investment Commission of the People's Republic of China;
2. The agreement on the joint venture reached by the various parties involved, the contract and the articles of association of the venture, in both Chinese and foreign language and each in triplicate, and;
3. A duplicate of the license and other documents issued by the departments concerned under the government of the country (or region) from which the foreign participants in the joint venture come.

Article 4. In applying for registration of a joint venture using Chinese and foreign investment, a registration form, in triplicate, shall be filled in Chinese and foreign language. Items to be registered include the name of the venture, its address, scope of production and business, forms of production and business, registered capital of the parties concerned, chairman and vice-chairman of the board of directors, general manager and deputy general managers or general director and deputy directors of the plant, the number and date of approval on the document, the size of the entire staff, and the number of foreign workers and staff members.

Article 5. A joint venture using Chinese and foreign investment is regarded as having officially been established the day when a license for its operation is issued to it, and the legitimate production and business shall be protected by the law of the People's Republic of China.

An unregistered enterprise shall not be permitted to go into operation.

Article 6. A joint venture using Chinese and foreign investment shall by producing the license for its operation, open an account with the Bank of China or another bank approved by the Bank of China, and register with the local tax bureau for payment of taxes.

Article 7. In cases where a joint venture using Chinese and foreign investment desires to move to a new site, shift its production, increase or cut or transfer the registered capital, or extend the contract period, the said venture shall, within one month after approval by the Foreign Investment Commission of the People's Republic of China, register the changes with the Administrative Bureau for Industry and Commerce in the province, municipality or autonomous region where it is located.

In cases where changes to other items are effected, the said venture shall have to forward at the end of the year a written report about these changes to the Administrative Bureau for Industry and Commerce in the province, municipality or autonomous region where it is located.

Article 8. In registering or getting its changes registered, a joint venture using Chinese and foreign investment shall pay the registration fee or the fee for getting its changes registered, the sum of which is to be fixed by the General Administration for Industry and Commerce of the People's Republic of China.

Article 9. A joint venture using Chinese and foreign investment, upon the expiration of the contract period of the venture or desirous of terminating the contract before its expiration date, shall upon production of the document of approval issued by the Foreign Investment Commission of the People's Republic of China register for the nullification of the contract with the Administrative Bureau for Industry and Commerce in the province, municipality or autonomous region where it is located. The license of the said venture shall be handed in for cancellation after examination by the General Administration for Industry and Commerce of the People's Republic of China.

Article 10. The General Administration for Industry and Commerce of the People's Republic of China and the Administrative Bureau for Industry and Commerce in the provinces, municipalities and autonomous regions are authorized to supervise and inspect the joint ventures using Chinese and foreign investment in the areas they govern. In cases of violations of the present regulations, the violator shall be given a warning or be fined in accordance with the varying degrees of seriousness in each specific case.

Article 11. The present regulations come into force on the date of its promulgation.

APPENDIX H

INTERIM REGULATIONS CONCERNING THE RESIDENT OFFICES OF FOREIGN ENTERPRISES

Promulgated by the State Council on October 30, 1980.

Article 1. The regulations hereunder are formulated with a view to facilitating the development of international economic and trade contacts and the control of the resident offices in China of foreign companies, enterprises and other economic organizations (referred to hereafter as foreign enterprises).

Artica 2. Any foreign enterprise desiring to establish a resident office in China should first of all apply for permission and after securing an approval go through the registration procedure.

No foreign enterprise is allowed to start business activities in the nature of those of a resident office before such an approval is granted and the registration procedure completed.

Article 3. A foreign enterprise, when applying for the permission to establish a resident office in China, should produce the following documents and reference materials:

1. **An application form signed by the chairman of the board of directors or the general manager of that enterprise. The content of the application form should include such details as the name of the resident office to be set up, the name(s) of the responsible member(s), the scope of activity, duration and site of the office;**
2. **The legal document sanctioning the operation of that enterprise issued by the authorities of the country or the region in which that enterprise operates;**
3. **The capital creditability document issued by the banking institution(s) which has business contact with that enterprise;**
4. **The credentials and brief biographies of the members of the resident office appointed by that enterprise.**

A banking or insurance institution which desires to open a resident office should, apart from producing the documents and reference materials as specified in paragraphs 1, 2 and 4 of the foregone section, produce at the same time an annual report on the assets and liabilities and losses and profits of the head office of that enterprise, its constitution and the composition of its board of directors.

Article 4. Applications of foreign enterprises for permission to establish resident offices are to be approved by one of the following organizations:

1. **A trader, manufacturer or a shipping agent should apply to the Ministry of Foreign Trade of the People's Republic of China for approval;**

2. A banking or insurance institution should apply to the People's Bank of China for approval;

3. A maritime shipping operator or a maritime shipping agent should apply to the Ministry of Communications of the People's Republic of China for approval;

4. An air transport enterprise should apply to the General Administration of Civil Aviation of China for approval;

5. Enterprises outside these lines of activity should, according to the nature of their operations, apply to the proper commissions, ministries or bureaus under the Government of the People's Republic of China for approval.

Article 5. When granted approval to establish a resident office, a foreign enterprise should, within 30 days of the date of approval, go to the General Administration for Industry and Commerce of the People's Republic of China on the strength of the approval document and go through the registration procedure of filing in a registration form and paying the registration fees before it is issued a registration certificate. The original approval document should be recalled in case of failure to register within the deadline.

Article 6. After the approval for the establishment of a resident office is granted in accordance with stipulations in Article 4, the members of that office and their families should, on the strength of the approval document, apply to the local public security organ for residence permission before they are issued residence permits.

Article 7. A resident office, when desiring to change its name, its responsible member(s), scope of operation, duration or site, should apply to the original approval-issuing organization and, after securing an approval, go to the General Administration for Industry and Commerce of the People's Republic of China on the strength of the approval document and go through the procedure for effecting such a change in the registration and pay the fees. It should also go through the procedure with the local public security organ for changing the residence permits.

Article 8. A resident office should, on the strength of the registration certificate and in accordance with the relevant stipulations of the Bank of China, open an account in the Bank of China or in any bank which the Bank of China may designate.

Article 9. A resident office and its members should, in accordance with the stipulations of Chinese tax laws, go through the tax registration procedure with the local tax office and pay taxes in accordance with the regulations.

Article 10. A resident office and its members should declare to China's House of Customs the imported office articles, articles for daily use and means of transport and pay customs duties and industrial and commercial unified taxes as stipulated.

The imported vehicles and ships should be registered with the local public security organ before the license plates and permits are issued. Fees should be paid to the local tax office for the use of the license plates for such vehicles and ships.

Unauthorized transfer or sale of the above-said imported goods are not permitted. In the event of a necessary transfer or sale, an application should be put forward to the House of Customs and approval obtained before such a transfer or sale can be effected. Imported goods can be sold only to designated shops.

Article 11. A resident office should entrust local service units for foreigners or such other units as may be designated by the Chinese government on such matters as renting a house or engaging the service of Chinese personnel.

Article 12. The Government of the People's Republic of China undertakes to protect, in accordance with law, the legitimate rights and interests of resident offices and their members and facilitate their normal business activities.

Article 13. The resident offices are not allowed to set up radio stations on Chinese territory. They should apply to the local telecommunications bureaus for the renting of such commercial communications lines or communication equipment as may be necessary for their business operations.

Article 14. The members of a resident office and their families should abide by Chinese laws, decrees and relevant regulations in all their activities in China and in entering and leaving China.

Article 15. In case a resident office and its members violate the "Interim Regulations" or they are engaged in other law-breaking activities, the proper Chinese authorities have the power to look into the cases and deal with them in accordance with law.

Article 16. A resident office should notify in a written form, 30 days in advance of the termination of its operation, to the original approval granting organization when the duration of its operation expires or if it decides to end its business activities before the due date and, after clearing up its debts, paying its taxes and winding up other related matters, go through the formalities with the original registration certificate issuing organization for cancelling the registration and turn in the certificate.

The foreign enterprise which the said resident office represented should continue to be held responsible for any matter that the said resident office may leave unfinished at the time of its termination.

Article 17. Those resident offices that have already been established with approval should, within 30 days of the promulgation of the "Interim Regulations", go through the procedure of registration with the General Administration for Industry and Commerce of the People's Republic of China on the strength of the documents of approval.

Article 18. Any other matter that may be uncovered in the "Interim Regulations" should be handled in accordance with the relevant Chinese laws, decrees and regulations.

Article 19. The "Interim Regulations" should apply to any foreign enterprise which desires to appoint a resident representative(s) as to those desiring to establish resident offices.

Article 20. The "Interim Regulations" go into affect on the day of promulgation.

APPENDIX I

PROVISIONAL REGULATIONS FOR EXCHANGE CONTROL OF THE PEOPLE'S REPUBLIC OF CHINA

Promulgated by the State Council on December 18, 1980.

Chapter One. General Provisions

Article 1. These provisional regulations are formulated for the purpose of strengthening exchange control, increasing national foreign exchange income and economizing on foreign exchange expenditure so as to expedite the national economic growth and safeguard the rights and interests of the country.

All foreign exchange income and expenditure, the issuance and circulation of all kinds of payment instruments in foreign currency, dispatch and carriage into and out of the People's Republic of China of foreign exchange, precious metals and payment instruments in foreign currency shall be governed by these regulations.

Article 2. Foreign exchange herein mentioned refers to:

A. Foreign currencies, including banknotes, coins, etc.

B. Securities in foreign currency including government bonds, treasury bills, corporate bonds and debentures, shares, interest and dividend coupons, etc.

C. Instruments payable in foreign currency, including bills, drafts, cheques, bank deposit certificates, postal savings certificates, etc.

D. Other foreign exchange funds.

Article 3. The People's Republic of China pursues the policy of centralized control and unified management of foreign exchange by the state.

The administrative organ in charge of exchange control of the People's Republic of China is the State General Administration of Exchange Control (SGAEC) and its branch offices.

The specialized foreign exchange bank of the People's Republic of China is the Bank of China. No other financial institution shall engage in foreign exchange business, unless approved by the SAGEC.

Article 4. All Chinese and foreign organizations and individuals in the People's Republic of China must, unless otherwise stipulated by law or decree or in these regulations, sell their foreign exchange proceeds to the Bank of China. Any foreign exchange required is to be sold to them by the Bank of China in accordance with the quota approved by the state or with relevant regulations.

The circulation, use and mortgage of foreign currency in the People's Republic of China are prohibited. Unauthorized sales and purchases of foreign exchange and unlawfully seizing possession of foreign exchange in whatever ways and by whatever means are prohibited.

Chapter Two. Exchange Control Relating to State Organizations and Collective Economic Units

Article 5. Foreign exchange income and expenditure of state organs, armed forces units, non-governmental bodies, educational institutions, state enterprises, government establishments, and urban and rural collective economic units in China (hereinafter referred to as domestic organizations) are all subject to control according to plan.

Domestic organizations are permitted to retain a proportion of their foreign exchange receipts in accordance with relevant regulations.

Article 6. Unless approved by the SGAEC or its branch offices, domestic organizations shall not:

Possess foreign exchange;
Deposit foreign exchange abroad;
Offset foreign exchange expenditure against foreign exchange income; or
Use the foreign exchange belonging to state organs stationed abroad or Chinese enterprises and establishments resident in foreign countries or in the Hong Kong and Macao regions, by way of borrowing or acquisition.

Article 7. Unless approved by the State Council domestic organizations shall not issue securities with foreign exchange value inside or outside China.

Article 8. Departments under the State Council and people's governments of various provinces, municipalities and autonomous regions shall compile annual overall plans for domestic organizations under their respective jurisdiction whereby loans may be accepted from banks or enterprises in foreign countries or in the Hong Kong and Macao regions. These plans shall be submitted to the SGAEC and the Foreign Investment Control Commission for examination and forwarding to the State Council for approval.

The procedure for examining and approving individual borrowing shall be prescribed separately.

Article 9. The portion of foreign exchange retained by domestic organizations, non-trade foreign exchange and foreign exchange under compensatory trade received in advance for later payments, funds borrowed in convertible foreign currency, and other foreign exchange held with the approval of the SGAEC or its branch offices, must be placed in foreign currency deposit account or foreign currency quota accounts to be opened with the Bank of China, and must be used within the prescribed scope and be subject to the supervision of the Bank of China.

Article 10. When domestic organizations import or export goods, the banks handling the transactions shall check their foreign exchange receipts and payments either against the import or export licenses duly verified by the Customs or against the Customs declaration forms for imports or exports.

Article 11. State organs stationed abroad must use foreign exchange according to the plan approved by the state.

The operating profits of enterprises and establishments in foreign countries or in the Hong Kong and Macao regions must, except the portion kept locally as working funds according to the plans approved by the state, be transferred back on scheduled time and be sold to the Bank of China.

No Chinese organization stationed abroad is permitted to keep foreign exchange for domestic organizations without authorization.

Article 12. Delegations and work-groups sent temporarily to foreign countries or to the Hong Kong and Macao regions must use foreign exchange according to their respective specific plan, and must, upon their return, promptly transfer back to China their surplus foreign exchange to be checked and sold to the Bank of China.

Foreign exchange earned in their various business activities by the delegations and work-groups referred to in the above paragraph and by members thereof, must be promptly transferred back to China and must not be kept abroad without the approval of the SGAEC or its branch offices.

Chapter Three. Exchange Control Relating to Individuals

Article 13. Foreign exchange remitted from foreign countries or from the Hong Kong and Macao regions to Chinese or foreign nationals or stateless persons residing in China must be sold to the Bank of China, except the portion retained as permitted by the state.

Article 14. Chinese and foreign nationals and stateless persons residing in China are permitted to keep in their own possession foreign exchange already in China.

The foreign exchange referred to in the above paragraph shall not, without authorization, be carried or sent out of China either in person or by others or by post. If the owners wish to sell the foreign exchange, they must sell it to the Bank of China and are permitted to retain a portion thereof as convertible foreign currency according to the percentage prescribed by the state.

Article 15. When foreign exchange that has been kept in foreign countries or in the Hong Kong and Macao regions by Chinese residents in China prior to the founding of the People's Republic of China, by overseas Chinese prior to their returning to and settling down in China, by Hong Kong and Macao compatriots prior to their returning to and settling down in their home places, is transferred to China, the owners are permitted to retain a portion thereof as convertible foreign currency according to the percentage prescribed by the state.

Article 16. When foreign exchange belonging personally to individuals sent to work or study in foreign countries or in the Hong Kong and Macao regions is remitted or brought back to China, the owners returning after completion of their missions are permitted to retain the entire amount as convertible foreign currency.

Article 17. The percentages of foreign exchange retention permitted under articles 13, 14 and 15 of these regulations shall be prescribed separately. Foreign exchange retained by individuals as permitted under articles 13, 14, 15 and 16 of these regulations must be deposited with the Bank of China. These foreign exchange deposits may be sold to the Bank of China or remitted out of China through the Bank of China, or taken out of China against certification by the Bank of China. It is however not permitted, without authorization, to carry or send deposit certificates out of China either in person or by others or by post.

Article 18. Foreign exchange remitted or brought into China from foreign countries or from the Hong Kong and Macao regions by foreign nationals coming to China, by overseas Chinese and Hong Kong and Macao compatriots returning for a short stay, by foreign experts, technicians, staff members and workers engaged to work in domestic organizations, and by foreign students and trainees, may be kept in their own possession, or sold to or deposited with the Bank of China, or remitted or taken out of China.

Article 19. Chinese and foreign nationals and stateless persons residing in China may apply to the local branch offices of the SGAEC for the purchase of foreign exchange to be remitted or taken out of China. When approved, the required foreign exchange will be sold to the applicants by the Bank of China.

When foreign experts, technicians, staff members and workers engaged to work in domestic organizations require foreign exchange to be remitted or taken out of

China, the Bank of China will deal with their application in accordance with the stipulations in the contracts or agreements.

Chapter Four. Exchange Control Relating to Foreign Representations in China and Their Personnel

Article 20. Foreign exchange remitted or brought into China from foreign countries or from the Hong Kong and Macao regions by foreign diplomatic missions, consulates, official commercial offices, offices of international organizations and non-governmental bodies resident in China, diplomatic officials and consuls, as well as members of the permament staff of the above units, may be kept in their own possession, or sold to or deposited with the Bank of China, or remitted or taken out of China.

Article 21. The conversion into foreign currency, if required of visa and certification fees received in renminbi from Chinese citizens by foreign diplomatic missions and consulates in China, is subject to approval by the SGAEC or its branch offices.

Chapter Five. Exchange Control Relating to Enterprises with Overseas Chinese Capital, Enterprises with Foreign Capital, and Chinese and Foreign Joint Ventures and Their Personnel

Article 22. All foreign exchange receipts of enterprises with overseas Chinese capital, enterprises with foreign capital and Chinese and foreign joint ventures, must be deposited with the Bank of China, and all their foreign exchange disbursements must be paid from their foreign exchange deposit accounts.

The enterprises referred to in the above paragraph must submit periodic reports and statements of their foreign exchange business to the SGAEC or its branch offices, all of which are empowered to inspect their activities in respect to their foreign exchange receipts and payments.

Article 23. Except where otherwise approved by the SGAEC or its branch offices, renminbi should in all cases be used in the settlement of accounts between enterprises with overseas Chinese capital, enterprises with foreign capital, Chinese and foreign joint ventures and other enterprises and individuals residing in the People's Republic of China.

Article 24. Enterprises with overseas Chinese capital, enterprises with foreign capital and foreign partners in Chinese and foreign joint ventures may apply to the Bank of China for remitting abroad their net profits after tax as well as other legitimate earnings by debiting the foreign exchange deposit accounts of the enterprises concerned.

The enterprises and foreign partners referred to in the above paragraph should apply to the SGAEC or its branch offices for transferring foreign exchange capital abroad by debiting the foreign exchange deposit accounts of the enterprises concerned.

Article 25. An amount not exceeding 50 percent of their net wages and other legitimate earnings after tax may be remitted or taken out of China in foreign currency by staff members and workers of foreign nationality and those from the Hong Kong and Macao regions employed by enterprises with overseas Chinese capital, enterprises with foreign capital and Chinese and foreign joint ventures.

Article 26. Enterprises with overseas Chinese capital, enterprises with foreign captital and Chinese and foreign joint ventures which wind up operation in accordance with legal procedure, should be responible for the liquidation within the scheduled period of their outstanding liabilities and taxes due in China, under the joint supervision of the relevant departments in charge and the SGAEC or its branch offices.

Chapter Six. Control Relating to Carrying Foreign Exchange, Precious Metals and Payment Instruments in Foreign Currency into and out of China

Article 27. No restrictions as to the amount is imposed on the carrying into China of foreign exchange, precious metals and objects made from them, but declaration to the Customs is required at the place of entry.

To carry foreign exchange out of China or to carry out of China the foreign exchange previously brought in shall be permitted by the Customs against certification by the Bank of China or against the original declaration form at the time of entry.

To carry out of China precious metals and objects made from them or to carry out of China precious metals and objects made from them previously brought in shall be permitted by the Customs according to the specific circumstances as prescribed by government regulations or against the original declaration form at the time of entry.

Aricle 28. Renminbi traveler's cheques, traveler's letters of credit and other renminbi payment instruments convertible into foreign currency may be brought into China against declaration to the Customs, and taken out of China against certification by the Bank of China or against the original declaration form at the time of entry.

Article 29. Unless otherwise approved by the SGAEC or its branch offices, the carrying or sending out of China either in person or by others or by post of the following documents and securities held by Chinese residing in China is not permitted:

Bonds, debentures, share certificates issued abroad;
Title deeds for real estate abroad;
Documents or deeds necessary in dealing with creditor's right or owner's right to possession regarding inheritance, real estate and other foreign exchange assets abroad.

Article 30. The carrying or sending out of China of renminbi cheques, drafts, passbooks, deposit certificates and other renminbi instruments held by Chinese or foreign nationals or stateless persons residing in China, is not permitted, either in person or by others or by post.

Chapter Seven: Supplementary Provisions

Article 31. All units and individuals have the right to report any violation of these regulations. Reward shall be given to such units or individuals according to the merit of the report. Violators shall be penalized by the SGAEC, its branch offices or by the departments of public security, or by the departments of Administration of Industry and Commerce or by the Customs. According to the seriousness of the offense, the penalties may take the form of compulsory exchange of the foreign currency for renminbi, or fine or confiscation of the properties or both, or punishment by judicial authorities according to law.

Article 32. The exchange control regulations for special economic zones, for trade in border areas, and for personal dealings between inhabitants across the border shall be formulated by the people's governments of the provinces, municipalities and autonomous regions concerned in the spirit of these regulations and in the light of specific local conditions, and shall be enforced upon the approval of the State Council.

Article 33. Detailed provision for the enforcement of these regulations shall be formuated by the SGAEC.

Article 34. These regulations shall come into force on March 1, 1981.

APPENDIX J

DETAILED REGULATIONS FOR THE IMPLEMENTATION OF EXCHANGE CONTROL WITH RESPECT TO FOREIGN REPRESENTATIVE OFFICES AND THIER EMPLOYEES

Issued by the State General Administration of Exchange Control on August 10, 1981.

Article 1. These rules are formulated for implementing the stipulations in Articles 20 and 21 of the "Provisional Regulations for Exchange Control of the People's Republic of China."

Article 2. Foreign exchange in convertible currency and payment instruments in convertible renminbi remitted or carried into China from foreign countries or from Hong Kong and Macao by foreign diplomatic missions, consultates, official commercial offices, offices of international organizations and non-governmental bodies resident in China (hereinafter called foreign representations in China), diplomatic officials and consuls as well as members of the permanent staff of the above foreign representations, may be kept in their own possession, or sold to or deposited with the Bank of China, or remitted out of China. If they are to be taken out of China, the matter shall be handled according to the stipulations of the "Rules Governing the Carrying of Foreign Exchange, Precious Metals and Payment Instruments in Convertible Currency into or out of China."

Article 3. In regard to countries which have signed payments agreements with China, their representations in China and personnel thereof shall only receive payment in renminbi when remittances to them are effected through a clearing account.

Article 4. Where foreign diplomatic missions and consulates in China wish to convert into foreign currency visa and certification fees received in renminbi from Chinese citizens, a written application has to be filed with the State General Administration of Exchange Control or its branch offices for approval.

Article 5. When foreign representations in China and their personnel sell commodities and equipment they previously brought into China from abroad or from Hong Kong and Macao, or bought in China, the Bank of China shall not provide them with foreign exchange for the renminbi proceeds they receive from the sale.

APPENDIX K

RULES GOVERNING THE CARRYING OF FOREIGN EXCHANGE, PRECIOUS METALS AND PAYMENT INSTRUMENTS IN CONVERTIBLE CURRENCY INTO OR OUT OF CHINA

Issued by the State General Administration of Exchange Control on August 10, 1981.

Article 1. These rules are formulated for implementing the stipulations in articles 27, 28, 29 and 30 of the Provisional Regulations for Exchange Control of the People's Republic of China.

Article 2. No restriction is imposed on the quantity of foreign exchange, payment instruments in convertible renminbi, gold, silver, platinum and other precious metals and objects made from them which may be carried into China by persons entering the country, but they must be declared to the customs at the place of entry.

Article 3. The carrying out of China of foreign exchange, payment instruments in convertible renminbi, gold, silver, platinum and other precious metals and objects made from them previously brought in shall be permitted by the customs against the original declaration form issued at the time of entry.

Article 4. The unused portion of the renminbi which has been converted either from foreign exchange and payment instruments in convertible renminbi brought in or from foreign exchange remitted in by persons entering the country may be converted back into foreign exchange before their departure from China and the customs shall permit the taking out of China of the foreign exchange so obtained against the exchange memo issued by the Bank of China.

Article 5. The carrying out of China of objects made from gold, silver, platinum and other precious metals bought in the country shall be permitted by the customs against certification by the sellers within the limit as prescribed by the state.

Article 6. The carrying out of China of foreign exchange and payment instruments in convertible renminbi shall be permitted by the customs against certification by the Bank of China. The carrying out of China of drafts, traveller's cheques and traveller's letters of credit in foreign currency, and renminbi banknote and passbook custodian certificates issued or sold by the Bank of China shall be permitted by the customs after examination, and no certification by the Bank of China is required.

Article 7. Chinese, or foreign nationals, or stateless persons residing in China shall, when emigrating from the country, be permitted by the customs to carry out of China gold, silver, platinum and other precious metals and objects made from them within the limit as prescribed by the state.

Article 8. The carrying or sending out of China in person, or by others, or by post of renminbi cheques, drafts, passbooks and deposit certificates and other renmibi payment instruments held by Chinese, or foreign nationals, or stateless persons residing in the country is not permitted.

Article 9. Unless otherwise approved by the State General Administration of Exchange Control or its branch offices, it is not permitted to carry or send out of China in person, or by others, or by post documents and securities held by Chinese residing in the country, such as foreign bonds, debentures, shares and title deeds; certification and agreements relating to the settlement of creditor's rights, inheritances, real estates and other foreign exchange assets abroad; and letters and instruments containing instructions of payment abroad.

Article 10. Where foreign enterprises which have terminated their business in China and foreign nationals who have left China wish to carry out of China foreign securities kept in the country, they shall be permitted to do so by the customs on the approval of the State General Administration of Exchange Control or its branch offices, but it is not permitted to carry out of the country Chinese securities and shares whether in person, or by others, or by post.

Article 11. Where bilateral agreements have been signed between China and foreign countries on the carrying of currencies into and out of each other's boundary, matters will be handled in accordance with the provisions thereof.

Article 12. These rules shall also apply where foreign exchange, payment instruments in convertible renminbi, gold, silver, platinum and other precious metals and objects made from them are carried into or out of the country by compatriots from Hong Kong and Macao.

Article 13. These rules are promulgated by the State General Administration of Exchange Control.

APPENDIX L

DETAILED RULES AND REGULATIONS ON EXCHANGE CONTROL RELATING TO INDIVIDUALS

Issued by the State General Administration of Exchange Control in December 1981.

Chinese, foreign nationals, or stateless persons residing in China shall sell foreign exchange remitted to them from foreign countries, or from the Hong Kong and Macao regions, to the Bank of China. The receiver is permitted to retain 10 percent of a single remittance of large amounts equivalent to 3,000 yuan or more.

The renminbi obtained from the sale of the above-mentioned foreign exchange to the Bank of China is entitled to the relevant preferential treatment given to overseas remittances.

Chinese residing within the boundaries of China are permitted to retain a portion of 30 percent of the foreign exchange they had deposited or inherited in foreign countries before the founding of the People's Republic of China and Overseas Chinese, as well as compatriots from Hong Kong and Macao, are permitted to retain 30 percent of the foreign exchange they had deposited or inherited in foreign countries, or in the Hong Kong and Macao regions, before returning to China and settling down in their native homes, provided that the Bank of China is entrusted with the remittance of foreign exchange back to China. The renminbi obtained from the sale of the remaining portion of 70 percent of the foreign exchange is entitled to the relevant preferential treatment given to overseas remittances.

Foreign nationals or stateless persons residing within the boundaries of China are permitted to retain the same portion of foreign exchange as mentioned in the above article which they have deposited or inherited outside the boundaries of China and they have entrusted the Bank of China for the remittance in China.

Overseas Chinese and compatriots from Hong Kong and Macao are permitted to retain a portion of 30 percent of the foreign exchange which they bring in or which is remitted to them when they return to China or settle down in their native homes, provided that they apply to the bank for retaining the portion within 2 months of their entry to China. The renminbi obtained from the sale of the remaining portion of 70 percent of the foreign exchange is entitled to the relevant preferential treatment given to overseas remittances. The application for retaining the above-mentioned foreign exchange that has been brought into China can be made only when a declaration is submitted to customs.

The personnel who have been sent by the state to work in foreign countries, or in the Hong Kong and Macao regions, must either remit, in due time, or bring back to China the remaining portion of foreign exchange, including wages and allowances for individuals, when they return to China upon completion of their assignments. The remaining portion should not be deposited outside the boundaries of China but may be kept by individuals in accordance with the certificates issued by Chinese organs stationed in foreign countries.

Students, trainees, graduate students, scholars, teachers, coaches and other personnel who have been sent by the state to study in foreign countries or in the Hong Kong and Macao regions must either remit in due time or bring back to China the remaining portion of their income in foreign exchange obtained during their stay abroad when returning to China. The remaining portion should not be deposited outside the boundaries of China and the portion due to each individual may be kept by them in accordance with the certificates issued by Chinese organs stationed in foreign countries.

The foreign exchange obtained in the form of publication fees, copyright fees, awards, subsidies or remuneration by individuals from publishing their inventions, creative works or books outside the boundaries of China, or from delivering speeches or giving lectures in their capacity as individuals outside the boundaries of China, or from contributing to foreign papers, magazines or professional journals should be remitted back to China in due time and should not be deposited outside the boundaries of China. The portion that is due to individuals may be kept in accordance with the relevant regulations approved by the State Council and the ministries and commissions concerned or in accordance with the agreement of the State General Administration of Exchange Control.

The portion of foreign exchange permitted to be kept by individuals as mentioned above in various articles must be deposited in the Bank of China. The deposit in foreign currency may be sent or carried out of China against the certification by the Bank of China. When the deposit is converted into renminbi, the relevant preferential treatment given to overseas remittance will be applied. However, the carrying or sending out of China in person, by others, or by post of deposit certificates is not permitted.

In handling foreign exchange kept by individuals, item 2 of article 4 of the "provisional Regulations for Exchange Control of the PRC" should not be violated. Chinese, foreign nationals, or stateless persons residing in China are permitted to individually possess foreign exchange kept in China. However, it is not permitted to carry or send foreign exchange out of the country whether in person, by others, or by post. If foreign exchange has to be sold, it should be sold to the Bank of China in accordance with the regulations prescribed in article 2 of these Detailed Regulations.

Foreigners visiting China, Overseas Chinese returning to China for a short time, compatriots from Hong Kong and Macao visiting their native homes, foreign experts, technical personnel, workers and staff members invited to work at various organs in China and foreign students and trainees are free to keep for themselves, as well as sell to or deposit in the Bank of China, foreign exchange which is remitted to them from foreign countries or Hong Kong and Macao regions or which they bring in. They may also send or carry it out of China against the original declaration form issued by customs at the time of entry.

The carrying or sending out of foreign exchange by foreign experts, technical personnel and workers and staff members who have been invited to work at various organs in China will be handled by the Bank of China in accordance with the relevant regulations prescribed in contracts or agreements.

APPENDIX M

ECONOMIC CONTRACT LAW

Adopted at the Fourth Session of the Fifth National People's Congress on December 13, 1981.

Chapter One. General Principles

Article 1. This law is specially formulated to protect the legal rights and interests of the parties concerned in economic contracts, safeguard social and economic order, improve economic benefit, guarantee the implementation of state plans and promote the development of the socialist modernization program.

Article 2. An economic contract is an agreement between legal persons for achieving a certain economic purpose and for defining each other's rights and obligations.

Article 3. Economic contracts, with the exception of those that are settled immediately, should be in written form. Documents, telegrams and charts related to contract revisions agreed upon by the parties concerned through consultations are also component parts of a contract.

Article 4. Economic contracts should be formulated in accordance with state laws and in conformity with the requirements of state policies and planning. No units and individuals are allowed to engage in illegal activities by means of contracts, disturb economic order, undermine state planning, violate state interests and public interests of the society or seek illegal earnings.

Article 5. Economic contracts should be formulated by implementing the principles of equality, mutual benefit, achieving unanimity through consultations and compensations of equal values. No one party is allowed to impose its will on another party. No one unit or individual is allowed to interfere illegally.

Article 6. An economic contract once drawn up according to the law has legal binding force. The parties concerned should fulfill all obligations stipulated in the contract. No one party is allowed to unilaterally alter or terminate the contract.

Article 7. The following economic contracts are invalid:

1. Contracts that violate the laws and state policies and planning;
2. Contracts signed by means of deception and under coercion;
3. Contracts signed by an agent who oversteps his authority or who signs the contracts, in the name of a principal, with himself or with other principals;
4. Economic contracts that violate state interests or public interests of the society.

Invalid economic contracts have no legal binding force from their inception.When a part of an economic contract is confirmed to be invalid and if the remaining parts' validity is not affected, the remaining parts will still be valid.

The power to confirm invalid economic contracts rests with the contracts administrative organs and the People's Courts.

Article 8. Stipulations of this law are applicable to contracts in purchase and sale, construction of projects, material processing, freight transportation, electricity supply, warehouse storage, property rental, money borrowing, property insurance, scientific and technical cooperation and other economic contracts.

Chapter Two. Formulating and Fulfilling Economic Contracts

Article 9. An economic contract is formulated when both parties concerned have achieved unanimity through consultations of the major articles of the economic contract according to the law.

Article 10. In formulating economic contracts on other's behalf, an agent should first secure power of attorney from the entrusting units and then sign the contracts in the name of the entrusting units according to the extent of their implied powers, only thus can the direct rights and obligations to the entrusting units exist.

Article 11. In cases of economic dealings concerning products and items prescribed in the state's mandatory plans, the economic contracts should be signed according to the targets set by the state. When no consensus could be reached at the time of signing, the matter shall be handled by the higher organs in charge of planning of both sides. In cases of economic dealings concerning products and items prescribed in the state's guiding plans, the economic contracts should be signed after considering the targets set by the state and taking into account the actual conditions of the units concerned.

Article 12. An economic contract should contain the following major articles:

1. Objective (referring to freight, service, projects, others);
2. Quantity and quality;
3. Prices or commission;
4. Time limit, place and mode of fulfilling the contract;
5. Responsibilities in case of violation of contract.

Other major articles of an economic contract comprise those articles that should be included as stipulated by the law or in keeping with the nature of economic contracts as well as those articles that any one of the parties concerned requests to be included in the contract.

Article 13. When money is to be used in fulfilling the obligations stipulated in an economic contract, renminbi should be used in computation and payment, except as stipulated otherwise by the law.

Unless the state allows the use of cash in fulfilling obligations, all accounts should be transferred through the banks.

Article 14. Any one of the parties concerned may pay a deposit to the other. After an economic contract has been fulfilled, the deposit should be returned or deducted from the price.

The party that pays the deposit has no right to ask for the return of the deposit if it does not fulfill the contract. The party that receives the deposit has to return twice the sum of the deposit received if it does not fulfill the contract.

Article 15. When one of the parties concerned in an economic contract requests a guarantee, the guarantee can be provided by a certifying unit that serves as an intermediate agent to guarantee that one of the parties concerned will fulfill the contract. When the guranteed party fails to fulfill the contract, the certifying unit will be responsible for making up for the losses incurred.

Article 16. After the invalidity of an economic contract has been confirmed, the party concerned should return to the other party the property that the former has acquired according to the contract. The party in the wrong should compensate for the ensuing losses incurred by the other party. If both parties are wrong in some ways, each will have to bear the corresponding responsibilities.

In case both parties purposely signed a contract that violates state interests and public interests of the society, the properties derived or due to be derived by both parties should be seized and turned over to the state treasury. If only one party is found to have intentionally committed such an act, this party should return the property acquired from the other party to the latter. The property derived or due to be derived by the unwitting party from the other party should be turned over to the state treasury.

Article 17. The following stipulations should be observed regarding product quantity, product quality, packaging quality, product prices and time limit for goods delivery in purchase-sale contracts (including contracts in supply, purchase, advanced purchase and combination, and cooperation and regulation of purchase and sale):

1. Product quantity: contracts should be signed according to the plans approved by the state and the higher departments in charge; in the absence of plans approved by the state and the higher departments in charge, the contracts will be signed by the supplying and receiving parties through consultations. Product quantity should be computed according to the methods stipulated by the state or the departments in charge; in the absence of stipulations by the state and the departments in charge, the methods will be worked out by the supplying and receiving parties.

2. Product quality and packaging quality: contracts in this respect should be signed according to state standards or professional criteria, if these are available. In the absence of these standards and criteria, contracts will be signed according to the standards set by the departments in charge. If the parties concerned have specific requirements to make, they should first consult each other and then sign contracts.

The supplying party should be responsible for the quality of the product and packaging and furnish the necessary technical documents or samples with which to determine the acceptability of the goods.

The methods of accepting and quarantining products quality-wise should conform to the relevant regulations approved by the State Council. In the absence of such regulations, the methods will be determined by both parties concerned through consultations.

3. Product prices: Contracts in this respect should be signed according to the prices (including state-fixed prices and floating prices) stipulated by all levels of departments in charge of pricing. If negotiated prices are allowed by the policy, the prices will be negotiated by the parties concerned.

   Some products are pegged to the state-fixed prices. If the state prices have been readjusted during the period of delivery specified by the contract, the prices of these products will be computed at the price level at the time of delivery. If these products are overdue in delivery, then the original prices will be applied in case of price hike and the new prices will be applied in case of price drop. If these products are picked up or payments are made behind schedule, then the new prices will be applied in case of price hike and the original prices will be applied in case of price drop. If floating prices and negotiated prices are used, then the prices specified in the contract will be applied.

4. The time limit for delivering (picking up) goods as stipulated by the contract should be observed. Whichever party that wants to deliver (pick up) goods ahead of or behind schedule should first reach agreement with the other party and act accordingly.

Article 18. Contracts for construction projects should be signed in accordance with the procedures prescribed by the state and the investment plans, statements of projected tasks and other documents approved by the state.

The work of a construction project, including survey, design, construction and installation, may be covered in a comprehensive contract signed by the construction unit with one contractor or in separated contracts signed by the construction unit with several contractors.

Survey and design contracts should specify the time for the two sides to provide basic survey and design data as well as various documents regarding design (including budgetary estimates) and should have provisions on the requirements regarding the quality of the design work and other terms of cooperation.

Construction and installation contracts should have provisions explicitly specifying the scope of the project, time required for construction, times for commencement and completion of intermediate work projects, quality of work for the project, cost of the project, time for furnishing technical data, responsibilities for supply of materials and equipment, appropriation of funds and final accounting, examination and acceptance of the project upon completion and cooperation between the two sides.

The examination and acceptance of a construction project should be based on the blueprint for the construction work and the related explanatory notes and on the standard specifications and quality criteria promulgated by the state for checking and accepting construction projects.

Article 19. Processing contracts should be signed on the basis of the projects or items required and quality demands set forth by the side placing the order and the capabilities of the contractor to undertake the processing work, fill the order and to repair as needed. Unless otherwise specified in the contract, the contractor should fulfill the main part of the processing work, the order or the repair job with its own equipment, techniques and labor and should not transfer the accepted work to a third party without the consent of the side placing the order. The side placing the order should receive the products made or the work completed by the contractor and give the latter remuneration for such work.

The contractor should promptly examine the raw materials and other materials provided by the side placing the order. If these materials are found not to conform with those specified in the contract, the contractor should immediately notify the other side to replace them or to supply what is lacking. The contractor should not replace of its own accord the raw materials and other materials provided by the other side, nor should it covertly change any parts of the items being repaired. Contractors violating this should be held responsible for making compensations.

In repairing houses or mass processing nonstandard products, the contractor should receive necessary examination and supervision by the side placing the order; however, the latter should in no way hamper the normal work of the contractor. If the side placing the order wants the contractor to keep secret the work covered by the contract with regard to duplication, design, translation or tests and examinations of product properties, the contractor should strictly comply with such a request.

If the side placing the order fails to take delivery of the products or items ordered more than 6 months after the prescribed time, the contractor has the right to sell the products or items and deposit the sales proceeds in the bank in the name of the side placing the order after deducting the remuneration and storage charges for the products or items.

Article 20. Cargo transportation contracts should be signed in accordance with the cargo dispatch plan, transportation capacity and transportation plan. Contracts for transporting small lots of cargo should be signed according to relevant state transportation regulations.

Contracts involving transport should state explicitly the responsibilities of the two or more sides concerned and the method for the transfer of cargo between them.

When the goods consigned for transport require packaging according to the regulations, the consignor should package the goods according to the standards set by the state departments concerned. In the absence of a unified packaging standard, the consignor should package the goods according to the principle of ensuring safety in cargo transportation. Otherwise, the consignee has the right to refuse the consignment.

Article 21. Electric power supply contracts should be signed on the basis of the electric power consumers' requirements and the availability of electric power. The contracts should have clauses explicitly stating the electric power, electric quantity, time for using electricity and responsibilities to be undertaken in case of breach of the contract terms.

Article 22. Warehouse storage contracts should be signed between the cargo consignors and consignees after consultations on the basis of the former's storage plan and the latter's warehouse capacities. Contracts for storage of small lots of goods should be signed according to pertinent regulations on warehouse storage.

Warehouse storage contracts should have clauses clearly stating the names of goods to be stored, their specifications, quantities, storage methods, particulars to be inspected and methods of inspection upon receipt of such goods as well as the procedures for taking the goods into and out of the warehouses, standards for damage and loss, treatment of damage and loss, storage charges and methods for calculating such charges and responsibilities to be undertaken in case of breach of the contract terms.

Upon receipt of the goods to be stored in the warehouse, the consignee should check their outside packaging, the varieties of products, their quantities and quality according to the details specified in the contract. In case the goods received in the warehouse are found not to conform with specifications, the consignor should be notified immediately. However, the consignee should be held responsible for making necessary compensation provided that discrepancies between the goods received and the details in the contract with regard to the varieties of goods, their quantities or quality are found after the good have been checked and accepted for storage by the consignee.

The consignor should provide the consignee with necessary materials for checking the goods to be stored, otherwise, the consignee should not be responsible for making compensation in case the varieties, quantities and quality of the goods received do not agree with what is specified in the contract.

Article 23. Property lease contracts should have clauses explicitly stipulating the name of the property to be leased, its size, use, period of lease, rental, time for making rental payment, obligations for maintenance of the property during the period of lease and responsibilities to be undertaken in case of breach of the contract terms.

The lessor should give the property to the lessee for use according to the time schedule and the stipulation on the state of the property as contained in the contract. If the lessor transfers the ownership of the property to a third party, the lease contract will be binding on the new owner.

To meet the needs of work, the lessee may let a third party rent and use the property, but before doing so, the lessee should obtain concurrence from the lessor.

The rental should be determined in accordance with the unified criteria, if any, set by the state. In the absence of such criteria, the rental is to be determined through consultations between the two sides.

Article 24. Loan contracts are signed in accordance with state credit loan plans and appropriate regulations. The contract must include unequivocal terms on the loan's exact figure, use, deadline and interest rate; method for account-settling; and responsibilities for breach of the contract.

Interest rates for loans are prescribed by the state and controlled by the People's Bank of China.

Article 25. Property insurance contracts are signed in the form of insurance policies or insurance certificates.

An insurance contract must include unequivocal stipulations on the kind of insurance, exact location (or transportation means and distance), amount insured, insurance responsibilities, method for compensation, payments of insurance premiums and the beginning and expiration dates of the contract.

The policy holder must protect the safety of properties insured. The policy seller may conduct safety inspections of properties insured. If factors endangering the safety of properties insured are found during a safety inspection, the policy holder should be promptly notified to eliminate these factors.

If a third party is responsible for making good the losses or damages to insured properties, the policy holder may request the insurance unit to honor the policy according to stipulations in the contract. However, the policy holder must relinquish to the insurance units the right of demanding indemnity and must assist the latter in demanding indemnity from the third party.

Article 26. Scientific and technological cooperation contracts (including scientific research, trial production, popularization of research achievements, sales of technology and technological consultation services) are signed in accordance with plans formulated by higher-level departments in charge or other departments concerned. When no such plans exist, the two interested parties may sign a contract through mutual consultations.

A scientific and technological cooperation contract must include unequivocal terms on projects or items for cooperation, technological and economic requirements, rate of progress, method of cooperation, fund and materials budget, rewards and responsibilities for breaking contract.

Chapter Three. Change or Cancellation of Economic Contracts

Article 27. An economic contract may be changed or canceled under one of the following conditions:

1. When both parties agree by mutual consultation, and when the change or cancellation does not harm state interests or affect state plans;
2. When the state plan on which the contract is based has been revised or canceled;
3. When one party of the contract can no longer fulfill the contract because the plant or enterprise has closed down, stopped production or been converted to other uses;
4. When a force majeure or factors other than a party's own fault which are beyond the control of the parties involved have made it impossible to fulfill the economic contract; and
5. When one party breaks the contract, and it has become impossible to fulfill the economic contract.

When one party of the contract wants to change or cancel an economic contract, it must promptly notify the other party. The party suffering losses due to the change or cancellation of an economic contract or request by the other party may be absolved from any responsibilities according to law, but the party causing the change or cancellation must be responsible for paying the losses suffered by the other party.

When one party of a contract has merged with another unit or has become independent from a parent unit, the responsible party or parties after the change will be responsible for fulfilling obligations and will enjoy privileges of the contract.

Article 28. The notice or agreement on changing or canceling an economic contract must be in written form (including documents, telegrams and others). Before an agreement is reached, the original economic contract will still be effective.

Article 29. A change or cancellation of an economic contract, if involving products or items prescribed in the state's mandatory plans, should be reported for approval by the department responsible for issuing such plans before any agreement on the change or cancellation may be signed.

Article 30. Suggestions on changing or canceling economic contracts and responses to such suggestions must be made within the time limit agreed upon by both parties or that set by the concerned department in charge.

Article 31. An economic contract may be changed or canceled when its responsible persons or legal representatives are changed.

Chapter Four. Responsibilities for Breaking an Economic Contract

Article 32. If an economic contract cannot be fulfilled or can only be partially fulfilled because of the fault of one party, the party responsible for the fault must be charged with the responsibility of breaking the contract. If the fault is shared by both parties, they both must share the responsibility for breaking the contract according to the actual situation.

If an individual, because of dereliction of duty, malfeasance or violations of the law, has thus become directly responsible for a major accident or serious losses, the individual will be investigated for both economic and administrative responsibilities or even for criminal charges.

Article 33. If an economic contract cannot be fulfilled or can only be partially fulfilled because of the fault of a leading body at a higher level or the concerned unit in charge, then the leading body or the responsible unit should be charged with breaking the contract. The party breaking the contract must make a penalty payment for breaking the contract or pay damages to the other party in accordance with the proper stipulations, and the case will be handled by the leading body at a higher level or by the unit in charge which is responsible for the fault.

Article 34. If, because of force majeure, one party cannot fulfill an economic contract, it must promptly notify the other party of the reasons why the contract cannot be fulfilled, why its fulfillment must be delayed, or why the contract can only be partially fulfilled. If the party has obtained from the concerned unit in charge an approval on the postponement, partial fulfillment or total cancellation of the contract, the party may be partially or fully absolved from the responsibilities for breaking a contract.

Article 35. When one party breaks an economic contract, it must make a penalty payment to the other party for breaking a contract. However, if the losses caused to the other party exceed the amount of the penalty paid, the responsible party must also pay damages to make up for what the penalty payment has failed to cover. If the other party demands continuous fulfillment of the contract, the responsible party must comply.

Article 36. Penalty payments for breaking contracts and payments for damages are to be paid from an enterprise's portion of the profits it shares with the state and must never be included in the enterprise's production costs. For administrative units or institutions, these payments are to be paid out of the surplus from their unit budgets.

Article 37. All penalty payments from breaking a contract and payments for damages must be paid within 10 days after the responsibilities have been ascertained, or they will be regarded as overdue payments. Neither side may arbitrarily withhold commodities or loans as mortgages against overdue payments.

Article 38. Responsibilities for Breaking a Purchase and Sales Contract.

1. Responsibilities of the supplier:
   - a. When the commodities or their specifications, quantity, quality or packaging do not conform to those prescribed in the contract, or when commodities are not delivered within prescribed time limits, the supplier has to pay a penalty payment for breaking a contract as well as pay damages.
   - b. When products are shipped to a wrong destination or delivered to a wrong unit (person), the supplier, in addition to having to reship them to the prescribed destination or unit (person), must also bear the added freight and other costs thus accrued. In addition, the supplier must pay a penalty for breaking a contract, if the commodities arrive on a date beyond the set time limit.
2. Responsibilities of the buyer:
   - a. For canceling an order of commodities, the buyer must pay both penalty and damages payments.
   - b. If payments are not made or commodities not picked up on dates set in the contract, the buyer must pay a penalty for breaking the contract.
   - c. When requesting a change in the original destination where the commodities are to be delivered, the buyer must bear the additional cost thus accrued.

Article 39. Responsibilities for Breaching Contracts of Construction Projects.

1. Responsibilities of the contractor:
   - a. If and when a survey and design are done poorly or the failure to deliver the survey and design documents on time results in a construction delay and causes losses, the surveying and designing unit shall continue to complete the design and reduce or forfeit the designing fee until the loss is made up.
   - b. If and when the quality of construction does not conform with contract specifications, the party awarding the contract is entitled to demand repair, reconstruction or alteration. If and when repair, reconstruction or alteration causes a delay in delivery, the contractor shall pay for the breach of contract resulting from the overdue delivery.
   - c. The contractor shall pay for breach of contract because of overdue delivery when the delivery time does not conform with contract specifications.

2. Responsibilities of the party awarding the contract:

   a. If and when the party awarding the contract fails to provide the contractor with raw and other materials, facilities, construction grounds, funds and techncial data in accordance with the contract-specified times and requirements, the party awarding the contract shall compensate the contractor for the resulting losses in work stoppage or idleness in addition to accepting the construction delay.
   b. The party awarding the contract shall take measures to make up or minimize the losses if and when it stops or puts off construction. At the same time, the party awarding the contract shall pay the contractor for the losses and actual expenses resulting from a work stoppage or idleness, a layoff of workers, the moving of machines and equipment and the overstocking of materials and components.
   c. If and when the party awarding the contract changes its original plan or provides inaccurate data, or if it fails to provide the necessary conditions for surveying and designing tasks and this results in redoing or stopping these tasks or revising the design, it shall pay the contractor for the additional work actually done.
   d. If the party awarding the contract uses the construction project in advance without checking and accepting the project and finds quality problems, it shall shoulder all responsibility.
   e. If the party awarding the contract checks and accepts the construction project or pays the construction fee later than the contract-specified date, it shall pay a breach of contract fee because of the delay.

Article 40. Responsibilities for Breaching the Processing Contract.

1. Responsibilities of the side contracting for processing:

   a. It is this side's responsibility to pay for the damage or loss of the materials or goods provided by the side offering the contract for processing if the damage or loss is caused by carelessness on the party of the side contracting for processing.
   b. If the processing job entrusted by the offering side is not done in accordance with the contract-specified quality and quantity, the contracting side shall make repairs and make up the quantity without remuneration or accept a pro rata reduction in payment. If a serious defect is found in the processing job, the contracting side shall assume responsibility for paying for it.

2. Responsibilities of the side offering the contract for processing:

   a. It is this side's responsibility to pay for a work delay resulting from its failure to provide the contracting side with raw and other materials according to the specified time, quality and quantity.
   b. It shall pay the side contracting for processing a storage fee if it fails to pick up the processed goods on the specified date.
   c. It shall pay the breach of contract fee if it fails to pay the processing fee on the specified date.

Article 41. Responsibilities for Breaching a Shipment of Cargo Contract

1. Responsibilities of the shipper:

   a. It shall pay the party awarding the contract a breach of contract fee if it fails to ship the cargo by vehicles (or vessels) according to the time and requirement specified in the cargo shipping contract.

b. It shall transfer the cargo to the right destination or person without remuneration if it has shipped it to a wrong destination or person. It shall pay a breach of contract fee if the cargo delivery date is overdue.
c. It shall pay for total or partial loss, deterioration, pollution or damage of cargo sustained in the course of transportation in accordance with the actual loss (including packaging and freight and other miscellaneous expenses).
d. For the total or partial loss, deterioration, pollution and damage of cargo sustained in the course of coordinated transportation which is the responsibility of the shipper, the terminal shipper shall first bear the responsibility of compensation according to contract specifications and then obtain this compensation from the responsible midpoint shipper.
e. The shipper shall have no responsibility for breach of contract when the cargo is transported in accordance with the law and contract stipulations and when the total or partial loss, deterioration, pollution or damage is caused by (1) a force majeure, (2) the nature of the cargo itself, (3) reasonable wear and tear and loss, and; (4) fault of the party sending or receiving the shipment.

2. Responsibilities of the consignor:

a. It shall pay the shipper the breach of contract fee if it fails to hand over the cargo for shipping according to the stipulations and requirements set in the shipping contract.
b. It shall be responsible for paying for such mishaps as breaking the chain sling, damaging cargo due to falls, overturning cranes, or causing explosion and corrosion because it hides dangerous goods in ordinary cargo without reporting it or because it misreported the weight of cargo.
c. It shall be responsible for paying for pollution, corrosion and damage to other cargo or the transport means or personal injury or death because of defective package, which causes breakage of cargo.
d. It shall pay the shipper for loss if the cargo has been loaded by the consignor at its own exclusive loading point, or at an exclusive point at a public harbor or station, or at its own exclusive railway loading point and if damage or shortage is found at the unloading point while the coach is perfectly sealed and there are no abnormal conditions whatsoever.
e. It shall pay the shipper's unloading, storage and breach of contract fees if it hands over the cargo to the shipper without accompanying certificates for quality specifications or laboratory examination reports, making the receiver unable to unload the cargo.

Article 42. Responsibilities for Breaching the Contract for Power Supply and Consumption

1. Responsibilities of the power supplier:

The power supplier shall—in a safe manner—supply electricity according to the state stipulated standard and contract specifications. It must notify the power consumer in advance if the supply of electricity has to be limited for legitimate reasons. If the supply of power is limited without legitimate reasons or if power outages, which occur due to fault of the power supplier, cause losses to the power consumer, the power supplier shall reimburse the consumer for the loss.

2. Responsibilities of the power consumer:

The power consumer shall consume electricity according to the contract specifications. It must notify the power supplier in advance if—under particular circumstances—it has to use electricity in excessive amounts or at times not specified in the contract. If the power consumer does so without legitimate reasons, it shall pay a breach of contract fee.

Responsibilities for breaching water and gas supply and consumption contracts are similar to those stated in this article.

Article 43. Responsibilities for Breaching Warehousing and Storage Contracts

1. Responsibilities of the warehouse or statehouse:

   a. It shall pay for total or partial loss, deterioration, pollution and damage of goods in storage due to its carelessness. It shall be responsible for paying for the loss or deterioration of goods caused by packaging not in accordance with contract specifications or by overstaying the goods' effective storage time.
   b. It shall have the responsibility of paying for damage or loss of dangerous and perishable goods caused by handling not in accordance with regulations or by careless storekeeping.
   c. It shall pay the consignor the shipping and breach of contract fees in accordance with contract stipulation if goods are squeezed out of storage or cannot be stored due to its fault.
   d. It shall pay the consignor a late-delivery loss fee if it fails to deliver the stored goods at the stipulated time. If it delivers the stored goods to the wrong destination, it shall pay the consignor any loss caused by the delay in addition to transferring the goods to the specified destination according to contract.

2. Responsibilities of the consignor:

   a. It shall clearly spell out in the contract the flammable, explosive, poisonous and other dangerous goods as well as perishable goods with necessary information supplied. Otherwise, it shall have the responsibility of paying for material damage and personal injury or death caused by such goods including the criminal responsibility as the case may be.
   b. It must pay an overstorage fee and a breach of contract fee if the quantity of goods exceeds the contract-specified quantity or if the stored goods are not picked up on time.

Article 44. Responsibilities for Violating a Property Lease Contract

1. The responsibility of the lessee:

   a. The lessee is responsible for making repairs or paying for any damage or loss to the leased property due to the improper use, storage or maintenance of such property.
   b. The lessee is responsible for paying for losses to any house, equipment, machinery or other property that has been dismantled or altered without proper authorization.
   c. The lessor has the right to cancel a contract if the lessee subleases, without authorization, the leased property or if the lessee is engaged in illegal activities.
   d. The lessee must pay for violating the contract and pay additional lease fees for failing to return the leased properties within the prescribed period.

2. Responsibilities of the lessor:

   a. The lessor must pay for violating the contract if he fails to provide the property for lease at the time specified in the contract.
   b. The lessor is responsible for paying for the losses incurred if the quality of the property he offers for lease is below that specified in the contract.

c. If the lessor fails to provide the equipment and its accessories according to the contract so that the lessee is unable to make use of such equipment and accessories in time, the lessor must pay for breaking the contract while he must make up by providing all such equipment and accessories as specified in the contract.

d. In the case of the lease of large means of transportation such as ships and vehicles, the lessor must pay the lessee, according to the contract and the regulations concerned, for breaking the contract if the lessee must extend the lease due to the improper operation by the lessor or the mistakes of lessor's service personnel.

Article 45. Responsibilities for Violating Loan Contracts

1. The reponsibility of the lender:

   The People's Bank, specialized bank and credit cooperatives must pay for breaching the contract if they fail to provide the loan on time according to the contract.

2. The responsibility of the borrower:

   The borrower must pay additional interest, according to the regulations concerned, if he fails to use the loan as specified in the contract. In this case, the lender reserves the right to recall part of all of the loan ahead of time.

Article 46. Responsibilities for Breaching a Property Insurance Contract

1. The responsibility of the underwriter:

   The underwriter is responsible for paying, within the amount of insurance coverage, for the losses and expenses incurred by an accident covered by the insurance.

   The underwriter must pay the insured according to the contract for a reasonable fee charged by the insured for any rescue, protection, rearrangement or lawsuit action aimed at avoiding or reducing the losses to the insured property. The underwriter must shoulder the responsibility for breaching the contract if he fails to pay such a fee within the prescribed time.

2. The responsibility of the insured:

   If the insured conceals the true conditions of the insured properties, the underwriter reserves the right to cancel the contract or refuse to pay.

   The insured is responsible for his own losses and the underwriter is not responsible for any payment if the insured discovers a dangerous situation that poses a threat to the insured property but takes no action to remedy such a situation which causes an incident.

Article 47. Responsibilities for Violating Science and Technology Cooperation Contracts

1. The responsibility of the consignee or the party that transfers the technology:

   The consignee or the party that transfers the technology should return, on the basis of specific conditions, part or all of the amount of the consignment fee or transfer fee paid by the consignor or the party that accepts such transfer, if such a consignee or such a party that transfers the technology fails to fulfill the contract.

That party must also pay for the extra expenses incurred from any delay of the transfer procedure.

2. Responsibility of the consignor or the party that accepts the technology transfer:

   The consignor or the party that accepts the technology transfer cannot get a refund of the paid consignment fee or transfer fee if it fails to fulfill the contract. It is also liable for all the expenses paid by the consignee or the party that transfers the technology for dealing with the ensuing problems.

Chapter Five: Mediation and Arbitration for Economic Contract Disputes

Article 48. When there are disputes over an economic contract, the interested parties should consult with each other on time to settle the disputes. When they fail to reach an agreement after consultations, any one of the parties concerned can request that organ governing contracts assigned by the state for mediation and arbitration. It may also directly bring a suit against the other side at the People's Court.

Article 49. If an agreement has been reached after mediation, the parties concerned must implement such an agreement. If an adjudication is made in the course of arbitration, the organ governing contracts assigned by the state will work out a written judgment for arbitration. If one or both parties concerned are not satisfied with the arbitration, they may bring a suit at the People's Court within 15 days after receiving the written judgment. If no suit is brought within the prescribed period, the adjudication is then legalized.

Article 50. The litigants of an economic contract must submit their request to the organ governing contracts for mediation or arbitration within 1 year from the date when it knows or should know that its rights have been infringed upon. No case will be handled if such request is submitted beyond the prescribed period.

Chapter Six: Management of Economic Contracts.

Article 51. All business departments and the administrative departments of industry and commerce should carry out supervision and checkups of the economic contracts concerned and set up the necessary management system. All business departments should assess the implementation of the economic contracts as an enterprise economic target.

Article 52. The people's banks, specialized and credit cooperatives should supervise the implementation of economic contracts through the management of credits, loans and accounts.

The people's banks, specialized banks and credit cooperatives should close accounts according to the accounting system, and also handle cases such as payment on order, payment refusal, payment deduction and delayed payment.

If the litigants of an economic contract refuse to implement, on their own and within the prescribed time limit, the written mediation note, the written judgment for arbitration or the verdict of a court, the people's banks, specialized banks and credit cooperatives should deduct payments from the litigant's accounts or transfer funds from such accounts to make payments. This should be done after they received notice from the People's Court asking them to help implement the above-mentioned documents.

Article 53. As for those who sign false economic contracts, sell economic contracts a a profit, make use of economic contracts to carry out speculation, sign subcon tracts to reap unfair gains, illegally transfer such contracts, offer and accept bribe and carry out other illicit activities that harm the interests of the state and th public interests of society, the administrative departments of industry and com merce are charged with the responsibility for handling such cases. Cases that nee to pursue criminal liabilities should be referred to judicial organs for proper handling.

Chapter Seven: Supplementary Article.

Article 54. Individual businessmen and rural commune members should sign eco nomic contracts with juridical persons with reference to this law.

Article 55. The regulations governing foreign economic and trade contracts will b formulated separately with reference to the principles laid down by this law and th international practice.

Article 56. The departments concerned under the State Council and various pro vincial, municipal and autonomous regional people's governments may work ou regulations to implement this law subject to the approval of the State Council.

Article 57. This law becomes effective on 1 July 1982.

APPENDIX N

REGULATIONS ON SPECIAL ECONOMIC ZONES IN GUANGDONG PROVINCE

Approved by the Fifteenth Session of the Standing Committee of the Fifth National People's Congress on August 26, 1980.

Chapter One. General Principles

Article 1. Certain areas are delineated from the three cities of Shenzhen, Zhuhai and Shantou in Guangdong Province to form special economic zones (hereinafter referred to as special zones) in order to develop external economic cooperation and technical exchanges and promote the socialist modernization program. In the special zones, foreign citizens, overseas Chinese, compatriots in Hong Kong and Macao and their companies and enterprises (hereinafter referred to as investors) are encouraged to open factories or set up enterprises and other etablishments with their own investment or undertake joint ventures with Chinese investment, and their assets, due profits and other legitimate rights and interests are legally protected.

Article 2. Enterprises and individuals in the special zones must abide by the laws, decrees and related regulations of the People's Republic of China. Where there are specific provisions contained in the present regulations, they have to be observed as stipulated herewith.

Article 3. A Guangdong Provincial Administration of Special Economic Zones is set up to exercise unified management of the special zones on behalf of the Guangdong Provincial People's Government.

Article 4. In the special zones investors are offered a wide scope of operation, favourable conditions for such operation are created, and stable business sites are guaranteed. All items of industry, agriculture, livestock breeding, fish breeding and poultry farming, tourism, housing and construction, research and manufacture involving high technologies and techniques that have positive significance in international economic cooperation and technical exchanges, as well as other trades of common interest to investors and the Chinese side, can be established with foreign investment or in joint venture with Chinese investment.

Article 5. Land-levelling projects and various public utilities in the special zones such as water supply, drainage, power supply, roads, wharves, communications and warehouses, are undertaken by the Guangdong Provincial Administration of Special Economic Zones. When necessary, foreign capital participation in their development can be considered.

Article 6. Specialists at home and abroad and personages who are enthusiastic about China's modernization program will be invited by each of the special zones to form an advisory board as a consultative body for that special zone.

Chapter Two: Registration and Operation

Article 7. Investors wishing to open factories or take up various economic undertakings with their investment should apply to the Guangdong Provincial Administration of the Special Economic Zones, and will be issued licenses of registry and use of land after examination and approval.

Article 8. Investors can open accounts and deal with matters related to foreign exchange in the Bank of China in the special zones or other banks set up in the special zones with China's approval.

Investors can apply for insurance policies at the People's Insurance Company of China in the special zones and other insurance companies set up in the special zones with China's approval.

Article 9. Products of the enterprises in the special zones are to be sold on the international market. If an enterprise wants to sell its products in the domestic market in China, it must have the approval of the Guangdong Provincial Administration of Special Economic Zones and pay Customs duties.

Article 10. Investors can operate their enterprises independently in the special zones and employ foreign personnel for technical and administrative work.

Article 11. If investors want to terminate their business in the special zones, they should submit the reasons for their termination to the Guangdong Provincial Administration of Special Economic Zones, go through related procedures and clear the debts. The assets of the closed enterprises can be transferred and the funds can be remitted out of China.

Chapter Three: Preferential Treatment

Article 12. The land in the special zones remains the property of the People's Republic of China. Land to be used by investors will be provided according to the actual needs, and the length of tenure, rent and method of payment will be given favourable consideration according to the different trades and uses. Concrete methods will be specified separately.

Article 13. Machinery, spare parts, raw materials, vehicles and other means of production for the enterprises in the special zones are exempted from import duties. The necessary consumer goods shall be subjected to full or lower import duties or exempted, depending on the merits of each case. Imports of the abovementioned goods and exports of products of the special zones must go through existing Customs procedures.

Article 14. The rate of income tax levied on the enterprises in the special zones is to be 15%. Special preferential treatment will be given to enterprises established within two years of the promulgation of these regulations, enterprises with an investment of US$ 5 million or more, and enterprises involving higher technologies or having a longer cycle of capital turnover.

Article 15. Legitimate after-tax profits of the investors, salaries and other proper earnings after paying personal income tax of the foreign, overseas Chinese and Hong Kong and Macao workers and staff members of the enterprises in the special zones can be remitted out of China through the Bank of China or other banks in the special zones in line with the zone's foreign exchange control measures.

Article 16. Investors who reinvest their profits in the special zones for five years and longer may apply for exemption of income tax on profits from such reinvestment.

Article 17. Enterprises in the special zones are encouraged to use China- made machinery, raw materials and other goods. Preferential prices will be offered on the basis of the export prices of China's similar commodities and settled in foreign exchange. These products and materials can be shipped direct to the special zones with the vouchers of the selling units.

Article 18. Entry and exit procedures will be simplified and convenience offered to the foreigners, overseas Chinese and compatriots in Hong Kong and Macao going in and out of the special zones.

Chapter Four: Labour Management

Article 19. Labour service companies are to be set up in each of the special zones. Chinese staff members and workers to be employed by enterprises in the special zones are to be recommended by the local labour service companies or recruited by the investors with the consent of the Guangdong Provincial Administration of Special Economic Zones. Enterprises can test them before employment and sign labour contracts with them.

Article 20. The employees of the enterprises in the special zones are to be managed by the enterprises according to their business requirements, and if necessary, can be dismissed in line with the provisions of the labour contracts.

Employees of the enterprises in the special zones can submit resignation to their enterprises according to the provisions of the labour contracts.

Article 21. Scales and forms of the wages, award methods, labour insurance and various state subsidies of the Chinese staff members and workers in the enterprises are to be included in the contracts signed between the enterprises and the employees in accordance with the stipulation of the Guangdong Provincial Administration of Special Economic Zones.

Article 22. Enterprises in the special zones should have the necessary measures for labour protection to ensure that the staff members and workers work in safe and hygienic conditions.

Chapter Five: Administration

Article 23. The Guangdong Provincial Administration of Special Economic Zones exercises the following functions:

1. Draw up development plans for the special zones and organize for their implementation.
2. Examine and approve investment projects of investors in the special zones.
3. Deal with the registration of industrial and commercial enterprises in the special zones and with land allotment.
4. Coordinate the working relations among the banking, insurance, taxation, customs, frontier inpection, postal and telecommunications and other organizations in the special zones.

5. Provide staff members and workers needed by the enterprises in the special zones and protect the legitimate rights and interests of these staff members and workers.
6. Run education, cultural, health and other public welfare facilities in the special zones.
7. Maintain law and order in the special zones and protect according to law the persons and properties in the special zones from encroachment.

Article 24. The Shenzhen Special Zone is under the direct jursdiction of the Guangdong Provincial Administration of Special Economic Zones. Necessary agencies are to be set up in the Zhuhai and Shantou Special Zones.

Article 25. A Guangdong Provincial Special Economic Zones Development Company is to be set up to cope with the economic activities in the special zones. Its scope of business includes fund-raising and trust investment, operating enterprises or joint ventures with investors in the special zones, acting as agents for the investors in the special zones in matters related to sales and purchases with other parts of China outside the special zones, and providing services for business talks.

Chapter Six: Appendix

Article 26. These regulations shall be enforced after their adoption by the Guangdong Provincial People's Congress and after they have been submitted to and approved by the Standing Committee of the National People's Congress of the People's Republic of China.

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APPENDIX O

PROVISIONAL ENTRY/EXIT REGULATIONS (GUANGDONG SPECIAL ECONOMIC ZONES)

Adopted by the 13th Session of the Standing Committee of the 5th Provincial People's Congress of Guangdong, November 17, 1981 and Effective January 1, 1982

Article 1. These provisional regulations are drawn up in accordance with the relevant laws and decrees of the People's Republic of China and the Guangdong Special Economic Zone Regulations.

Article 2. These provisional regulations apply to all foreigners, overseas Chinese, Hong Kong, Macao and Taiwan compatriots who enter the special economic zones (SEZ) via the country's open ports within the SEZ or via ports designated for the SEZ. Those entering China via open ports to other parts of China or leaving from other parts of China via SEZ should do so in accordance with existing regulations.

Those entering and leaving are subject to inspection by the port inspection authorities.

Article 3. Those entering from Hong Kong or Macao should do so in accordance with the following entry procedure, whichever the case:

1. Foreign nationals and overseas Chinese should, with their passports, make entry/exit application through authorized travel organs or other representative organs in Hong Kong or Macao to obtain visa from China's visa issuing organs before being given inspection and clearance at border check-points. Foreign nationals and overseas Chinese who have set up factories, have other work or have bought homes or live in the SEZ and need to travel regularly to and from the SEZ may, with a letter of proof from the SEZ development company, apply for multiple entry/exit visas.
2. Hong Kong and Macao compatriots shall present their 'Home Visit Certificate' and the accompanying form or card to be checked and cleared. Those who have set up factories, have other work and have bought homes or live in the SEZ and regularly need same-day entry/exit may apply to be exempted from filling out the accompanying sheet or card. They should do so by presenting a letter of proof from the SEZ development company or their "Hong Kong Macao Compatriot Resident Permit" to obtain authorization from the SEZ (municipal) public security bureau. Those exempted from filling out the accompanying sheet or card may be issued a permanent registration booklet for personal effects by the customs inspection. Such booklets will be filled out by the bearer for customs inspection and clearance.
3. Taiwan compatriots entering the SEZ via Hong Kong or Macao may apply for entry/exit through authorized travel organs in Hong Kong and Macao with

proof of their personal identification to obtain entry/exit papers issued by China's visa issuing offices.

Article 4. Foreigners applying for entry into an SEZ directly from other countries or territories (other than Hong Kong or Macao) must present entry visas issued by China's visa issuing office for inspection and clearance.

Article 5. Tour groups of foreign nationals and overseas Chinese to an SEZ from Hong Kong and Macao for tourist reasons may be issued group visas for inspection and clearance.

Article 6. Foreign nationals, overseas Chinese, Hong Kong and Macao compatriots who own homes in or live in an SEZ and who are to live there six months or longer but less than one year may be issued a temporary resident permit by the SEZ (municipal) public security bureau; those to live in an SEZ a year or longer may be issued with a resident permit, renewable yearly.

Article 7. Baggage and goods of persons entering an SEZ from Hong Kong, Macao or overseas are subject to relevant controls and regulations of the People's Republic of China's SEZ customs inspection.

Article 8. Persons and goods from epidemic areas, which fall under "Health and Quarantine Regulations, People's Republic China" and "Animal and Plant Quarantine Regulations, People's Republic of China", are subject to inspection at the port of entry by the health quarantine and animal and plant quarantine authorities.

Article 9. Foreign nationals entering other parts of China from an SEZ or entering the SEZ from other parts of China shall do so in accordance with existing regulations.

Article 10. Transport vehicles travelling between the SEZ and Hong Kong or Macao should, through approval by the SEZ (municipal) people's government, obtain a pass from the SEZ (municipal) public security bureau for inspection and clearance.

Article 11. Entry/exit procedure for Chinese cadres and staff working in the SEZ shall be in accordance with existing regulations.

Article 12. These provisional regulations are effective as of January 1, 1982.

APPENDIX P

PROVISIONAL REGULATIONS FOR BUSINESS REGISTRATION (GUANGDONG SPECIAL ECONOMIC ZONES

Adopted by the 13th Session of the Standing Committee of the 5th People's Congress of Guangdong, November 17, 1981, and effective January 1, 1982.

Article 1. These provisional regulations are drawn up in accordance with the relevant laws and decrees of the People's Republic of China and the Guangdong Special Economic Zone Regulations.

Article 2. Foreign equity enterprises, equity joint ventures and nonequity joint ventures (hereafter referred to as SEZ enterprises) must obtain registration certificates or business licenses from the SEZ department of industry and commerce before starting operation; businesses termed 'special' by the People's Republic of China shall obtain special registration certificates or licenses. Those without registration certificates or business licenses are not permitted to start operation.

Registration procedure for foreign banks and other financial institutions shall follow separate regulations.

Article 3. SEZ enterprise registration applications shall be accompanied by:

1. Document of approval by the local SEZ (municipal) people's government or SEZ administrative committee where the enterprise is located.
2. Copies in Chinese and another language of the signed agreement of the enterprise's partnership, contracts and the enterprise's company charter, and a list of members of the board.
3. Copy of the registration issued by the relevant government organ of the business's country of origin or other credentials.

Article 4. All three copies of SEZ enterprise registration applications shall be filled out in Chinese and another language. Main items to be registered are: name of business, address, scope of business, operation of business, registered capital and the sharing of capital held by each partner in equity or nonequity enterprise, members of the board, general manager, deputy general manager or factory director, deputy factory director, the organ approving the document, document ordinal number and date, total number of employees, and number of foreign staff and workers.

Article 5. A foreign enterprise or enterprise of overseas Chinese, Hong Kong, Macao and Taiwan compatriots setting up a representative office in the SEZ shall present an application for representative office and a copy of the registration certificate issued by the relevant government organ of the business's country (or territory) of origin, to register with the SEZ department of industry and commerce within thirty days after being granted permission to open office.

Article 6. From the registration certificate's date of issue, the enterprise and its representative office is officially established; its legitimate production and operation shall come under the People's Republic of China's legal protection.

Article 7. An SEZ enterprise and representative office shall with their registration certificates open a bank account with the Bank of China or any other government-approved bank and register for tax payment with the local tax offices.

Article 8. SEZ enterprises shall make changes in their location or line of production, increase, cut or transfer their registered capital, extend a contract expiry date, and make changes in other registered items only with approval from the SEZ (municipal) people's government or the SEZ administrative committee, and shall thereafter make the necessary changes in registration with the SEZ's department of industry and commerce and tax offices.

Article 9. Registration certificates for SEZ enterprises and representative offices are renewable yearly.

Article 10. An SEZ enterprise and its representative office shall pay registration fees or change of registration fees when the new registration certificates are picked up. The amount of fees shall be determined by the SEZ (municipal) people's government or the SEZ administrative committee.

Article 11. Upon contract expiry date or termination of contract before the due date, the SEZ enterprise shall present permits issued by the SEZ (municipal) people's government, SEZ administrative committee or other authorized government offices to the SEZ's department of industry and commerce and tax offices for the cancellation procedure and shall hand in its registration certificate or business license.

Article 12. The SEZ department of industry and commerce is empowered to inspect and supervise SEZ enterprises within its jurisdiction. Enterprises which violate the regulation set forth here will, according to the degree of offense, be warned, fined or ordered to shut down.

Article 13. This provisional regulation is effective as of January 1, 1982.

APPENDIX Q

PROVISIONAL LABOR AND WAGE REGULATIONS (GUANGDONG SPECIAL ECONOMIC ZONES

Adopted by the 13th Session of the Standing Committee of the 5th Provincial People's Congress of Guangdong, November 17, 1981 and Effective January 1, 1982.

Article 1. These provisional regulations are drawn up in accordance with the relevant laws and decrees of the People's Republic of China and the Guangdong Special Economic Zone Regulations.

Article 2. The hiring of staff and workers by foreign enterprises, and joint equity and non-equity enterprises (hereafter SEZ enterprises) will be executed according to labor contracts concluded between the employer and employee. The labor contract shall include the following points:

Employment, dismissal, and resignation.
Job specification.
Service payment, award and fine.
Working hours and holidays.
Labor insurance and welfare.
Labor protection.
Labor discipline.

The contract is subject to the approval of the SEZ Labor Bureau.

Article 3. The special economic zone of Shenzhen and the municipalities of Zhuhai and Shantou shall, under the guidance of the SEZ (municipal) Labor Bureau, set up a labor service company to assist SEZ enterprises in the employment of labor and provide guidance for those seeking a contract with SEZ enterprises.

Article 4. With approval from the Labor Bureau, SEZ enterprises may hire staff and workers through the labor service company. They may also advertise for workers on their own behalf. Selection may be made by examination. Successful candidates may undergo a 3-6 month probation period.

Article 5. The staff and workers employed by an SEZ enterprise must be above the age of sixteen.

Article 6. The staff and workers employed shall abide by the labor contract and requirements of the management of the SEZ enterprise.

An SEZ enterprise may open technical schools or classes to train its management personnel and technical workers.

Article 7. The terms of remuneration shall be negotiated and set out in the labor contract. Allowances shall be made for different levels of remuneration according to different kinds of enterprises, and different types of work. Allowance for a progressive annual increase in remuneration of 5-15 percent shall be made in accordance with the degrees of proficiency of the staff and workers.

Article 8. The apportioning of the labor remuneration shall be as follows:

70 percent goes direct to the staff and workers as wages (including basic and floating wages).

15 percent is deducted for enterprise subsidies and other benefits for the staff and workers.

25 percent is for use as social labor insurance and various forms of subsidy the state provides for workers and staff.

Article 9. The SEZ enterprise makes its own decisions on the enterprise's form of wages, awards and allowances. Wages may take the form of piecework, or hour, daily or monthly work as the SEZ enterprise deems fit.

Article 10. The SEZ enterprise operates on a six work-day week and an eight-hour day basis. (With the exception of special types of work for which rules shall be made separately.) Overtime shall be paid accordingly.

Article 11. The staff and workers employed by the SEZ enterprise shall enjoy rest days, public holidays, home leaves, and special leaves for marriage and other reasons as stipulated in regulations promulgated by the Chinese government, as well as other rights and benefits stipulated in the labor contract.

Article 12. The SEZ enterprise is under the obligation to abide by laws and regulations pertaining to labor and environmental protection, to ensure labor safety, and healthy working conditions. For these purposes, the SEZ authorities reserve the right to inspect and supervise.

Article 13. The SEZ enterprise is under obligation to abide by the Chinese government's regulation on female workers and to give special consideration to the protection of their health.

Article 14. The SEZ enterprise is under obligation to make arrangements according to the Chinese government's Labor Insurance Regulations in the event of accidents which occur at work and cause wounds, disablement or death.

Article 15. The SEZ enterprise is obliged to accept the resignation of members of the staff and workers tendered under special circumstances. Workers who have received special training for a period of 3 months or more are not allowed to tender resignation unless they have completed a year's service. A worker who insists on resignation or leaves without permission shall be responsible for the compensation of the costs of his training.

Article 16. The SEZ enterprise has the right to lay off staff and workers whose employment is considered redundant or unnecessary, either in view of changes in production or technical conditions or because of failure to reach requirements after training where there is no suitable work to which they could be reassigned. Dismissed staff or workers are entitled to a month's wage for every year of service; one who has not completed a year's service is entitled to a month's wage. One who is still on probation is entitled to half a month's wage.

Article 17. The staff and workers of the SEZ enterprise are subject to warnings, a demerit mark, wage reductions or dismissal in the event of violating the enterprise's regulations and causing losses and according to the nature and degree of their offense. All cases of dismissal shall be reported to the SEZ (municipal) Labor Bureau.

Article 18. In the event of a member of the staff or worker refusing to accept dismissal he (she) may present his (her) case again to the enterprise for further consultation. If the consultation fails, the case may be referred to the SEZ (municipal) Labor Bureau for mediation. Either side has the right to appeal to the local People's Court if it considers the Labor Bureau's decision unsatisfactory.

Article 19. All matters concerning the hiring, dismissal, resignation, awards, fining, welfare and social insurance for Hong Kong, Macao and Taiwan compatriots in SEZ enterprises shall be decided by the board of directors of the SEZ enterprise and should be specified in the contracts governing employment.

Article 20. The above provisional regulations are effective as of January 1, 1982.

APPENDIX R

PROVISIONAL LAND REGULATIONS FOR SHENZHEN SPECIAL ECONOMIC ZONE

Adopted by the 13th Session of the Standing Committee of the 5th Provincial People's Congress of Guangdong, November 17, 1981, and Effective January 1, 1982

Chapter One: Preamble

Article 1. These provisional regulations are drawn up in accordance with the relevant laws and decrees of the People's Republic of China and the Guangdong Special Economic Zone (hereafter SEZ) Regulations.

Article 2. All the SEZ's developed and undeveloped mineral resources, streams, cultivated and uncultivated land, wooded areas, and land and offshore resources are under the unified administration of the Municipal People's Government of Shenzhen, Guangdong province, which has the right, according to the reconstruction needs of the SEZ and relevant laws and decrees, to requisition, appropriate, or nationalize land in the SEZ.

Article 3. All units and individuals shall abide by the SEZ general development plan once it has been approved. The topography and general configuration of the land shall not be altered without approval. Unauthorized appropriation of land and buildings of any kind is forbidden.

Article 4. Units and individuals wishing to use land should apply to the Shenzhen Municipal People's Government. Land use is forbidden without approval and the completion of the necessary procedures. All contracts concluded directly with units and individuals currently using the land without official approval are invalid.

Article 5. Authorized units and individuals shall only have the right to use land, but do not have ownership over it. Land sales and all disguised forms of land sales are forbidden. Leasing and unauthorized transfer of land are likewise forbidden. Mining exploitation, and impairing underground and other resources are not allowed.

Article 6. The compensation for civilian dwellings and other structures which either have to be moved away or torn down because of land appropriation shall be made as stipulated in relevant regulations by the People's Republic of China and the Guangdong Provincial People's Government.

Article 7. The Shenzhen Development Company is in charge of the SEZ land development. Outside capital may be acquired for development projects. Arrangements regarding the revenue from and costs for land development shall be made by the development company.

Chapter Two: Land Development And Administration

Article 8. An investor requiring the use of land shall, on the strength of approved documents, contracts, agreements, and the submission of relevant data, apply for the use of SEZ land with the municipal planning department. He will be issued a "Certificate for Land Use" upon completing the procedures of payment for the use of the land and demarcation of the land.

Article 9. The outside investor shall submit a general blueprint and the construction and production plans of his investment within 6 months after the Certificate for Land Use comes into effect, and break ground for construction according to the blueprint within 9 months after the certificate comes into effect. Failure to comply subjects his certificate to forfeiture and the fees paid will not be refunded. The construction and commissioning of the project shall proceed according to schedule. Delay should be reported to the department which approved the project for verification of the cause of delay. The certificate shall be cancelled in cases of illegitimate delay.

Article 10. All SEZ enterprises shall be subject to the final inspection and approval of the proper authorities before going into operation. Unless approval is obtained, outside investors shall not tear down, modify or rebuild any existing structure on the premises.

Article 11. SEZ enterprises shall strictly follow the ratio of space allotted to buildings and greenery required by SEZ. This ratio shall not be altered at will.

Article 12. All projects are required to meet safety and fire prevention precautions as set out in Chinese government regulations for civil engineering. Enterprises violating these regulations will not be allowed to go into operation. Those who do so without authorization and thus cause accidents shall compensate for the losses and be held legally responsible for such accidents.

Article 13. The use of land shall be in strict accordance with the contract and agreement signed by the SEZ enterprise. The land under contract shall not be used for other purposes without approval.

Article 14. The use of land outside the confines defined by the certificate for land use shall be applied for according to procedures stipulated in Article 8.

Chapter Three. The Duration of Land Use And Charges

Article 15. The duration of the use of land, which shall be decided in consultation, varies according to the size and actual needs of the investment. The maximum lengths of duration are:

1. For industrial use: 30 years;
2. For commercial use (including restaurants): 20 years;
3. For development of marketable housing: 50 years;
4. For educational, scientific and technological, and medical use: 50 years;
5. For tourism: 30 years;
6. For crop raising, animal husbandry, and raising grounds: 20 years.

The use of land may be renewed upon expiry of the terms set out in the certificate.

Article 16. Charges shall be collected on all land used by enterprises financed by outside investors or joint ventures. The rates vary according to the location and the purposes for which the land is used. In RMB per square meter per annum:

Land for industrial use: 10-30 yuan
Land for commercial use: 70-200 yuan
Land for development of marketable housing
30-60 yuan Land for tourism: 60-100 yuan

Land for crop raising, animal husbandry, and raising grounds: subject to negotiation.

The rates are subject to readjustments once every three years. The margin of fluctuation shall not exceed 30 percent.

Article 17. All educational, cultural, scientific and technological, medical, and social welfare institutions shall receive preferential treatment. Non-profit and exceptionally advanced technologies shall be exempt from land charges.

Article 18. Land charges may be paid in one sum, or paid within two years free of interest, or paid annually at an interest rate of 8 percent. In the event of readjustments, the sum to be paid shall be calculated according to the new rates.

Article 19. The above-mentioned regulations on the payment of charges for land use apply to all units involved in setting up enterprises and establishments.

Chapter Four. Public Utilities

Article 20. Within the confines of the land allotted, SEZ enterprises are under obligation to undertake the installation of public utility facilities according to the requirements of the municipal plans.

Article 21. SEZ enterprises shall be responsible for the installation of power lines, water supply lines, drainage works, sewage systems, gas lines, and telecommunications facilities within the confines of their allotted land. They shall also assume responsibility for all costs for connections with external mains.

Article 22. All residual substances, fumes and waste water shall be disposed of and treated according to relevant Chinese government regulations. SEZ enterprises are subject to inspections by the SEZ environmental authorities and pay fees according to regulations.

Article 23. These provisional regulations are effective as of January 1, 1982.

APPENDIX S

FEASIBILITY STUDY ELEMENTS

For the formation of a production and marketing joint venture—Listing of various points

INTRODUCTION: DECLARATION OF INTENTIONS

Ch. 1—Basic data.

1—Aim of the cooperation—Objective of the joint venture
2—The joint venture's partners
3—The legal format of the company, the duration of operation
4—The joint venture's area of activity
5—The description of the goods to be manufactured
6—The technology, documentation, licenses, quality guarantee, technical assistance
7—The built-in capacity of production and the dynamics of the annual production
8—The supply of raw materials, semi-finished goods, parts, etc.
9—Location, availability of utilities, pollution control, tie to transportation routes
10—Investments of the joint venture (possible use of certain existing buildings and structures)
11—Installation costs, preliminary costs—Needs for fixed assets and working capital

Ch. 2—Destination of the production

1—Distribution markets, present and projected—Subdivision of markets
2—Price of goods, present and projected
3—Agreements on marketing assistance, advertising, means for avoiding competition, after-sales servicing assurance, etc.

Ch. 3—Planning of the steps

1—Establishment of the joint venture
2—Investment achievement and implementation (in stages, if necessary)
3—Attainment of the capacity and that of the project parameters
4—Subsequent expansions

Ch. 4—Duration of the exploitation—Amortization

1—Amortization periods agreed upon
2—Method of amortization

Ch. 5—Levy of taxes and duties

1—Customs taxes, present and projected
2—Duties on investment and on production
3—Insurance
4—Facilitations, rebates, exemptions (for export of goods)

Ch. 6—Requirement for capital—Financing

1—Determination of the necessary fixed assets—Composition
2—Determination of the necessary working capital

3—Spreading of the capital requirements over the years (correlated with the investment achievement and the production development)
4—Financing plan—Value of capital, assets

Ch. 7—Own capitalization (Social capital)
1—Proportion and value of the partners' participation
2—Structure of the subscribed capital (asset contribution, proprietary industrial rights, cash)
3—Initial deposit (at the venture's registration)
4—Installments scheduling
5—Guarantees on the deposit of capital

Ch. 8—The procurement of the loaned capital .
1—Applied credits—conditions of credit, terms, interests
2—Obligations of the partners for the procurement of credit
3—Guarantees demanded—the method of their granting by the company
4—Scheduling of the needed credits and repayments (inclusive of interest)

Ch. 9—The company's personnel
1—Management
2—Labor
3—Research and development personnel
4—Administration personnel
5—Marketing personnel
6—Salary tariffs
7—Training of the Chinese personnel

.Ch.10—Economic calculations—Viability
1—Operation of the company—Agreed currency
2—Structure of cost pricing
3—Distribution of the general expenditures
4—Establishment of funds and expenditures
5—Structure of the price of sale to the factory
6—Structure of the price of sale to the consumer (transportation, taxes, rebates, market penetration costs, etc.)
7—Calculation of the general utilization
8—Method of calculation of the returns, related to the capital, related to the volume of business
9—Viability, method of calculation—Minimum acceptable viability, recovery of capital from profits

Ch. 11—Guarantees granted to foreign investors—Regulations
1—Reference to existing agreements
2—Necessity to conclude certain agreements—for political risks—for avoiding double taxation

Ch. 12—Relations with other companies
1—With Chinese subcontractors
2—With subcontractors of the foreign partner
3—With other subcontractors

Ch. 13—Implementation of the preliminary operations
1—Establishment of working groups and their responsibilities
2—Nomination of the coordinating group (directors of the project)
3—Indication of the consultants to be used (individuals, institutions)

Ch. 14—Documentation to be prepared—By whom—Responsibilities
1—Market studies
2—Technical studies
3—Techno-economic studies-valuation of investments

4—Accounting—viability, statement of general utilization, balance sheet and income statement, indices of viability, etc.
5—Financing plan
6—Various understandings, agreements, etc.
7—Formulation of the association contract
8—Formulation of the company's statutes
9—Elaboration of the basic memorandum for the establishment of the company.
10—Other documents

Ch. 15—Work plan preceding the establishment of the company

1—Detailed plan of projections for each assignment—coordination among various assignments
2—Elaboration of a critical path diagram (possible programming on computer)

Ch. 16—Miscellaneous.

Ch. 17—Period of validity of the frame agreement

1—Announcements and necessary approvals for the signing of the contract and its implementation
2—Period of validity, extension, conditions
3—Termination of validity of the frame agreement (due to the signing of documents for the establishment of the company, by agreement of the parties, by other conditions)
4—Solution of any problems that may arise during the implementation of the agreement

ANNEX 1

Description of issues dealt with by the following groups:

—Coordinating working group:
—Working group for technical matters
—Working group for the projection-evaluation of the investments
—Working group for marketing
—Working group for economic and viability aspects
—Working group on financial and bank related matters
—Working group on legal matters
—Other working groups of specialists, as needed

APPENDIX T

JOINT VENTURE CONTRACT FOR THE CONSTRUCTION AND OPERATION OF THE GREAT WALL HOTEL OF BEIJING

The Beijing branch of the China International Travel Service (hereinafter referred to as 'CITS') and E-S Pacific Development and Construction Company, Limited (hereinafter referred to as 'ESPDC'), have agreed through negotiations based on the principle of mutual benefit and equality and in a spirit of friendly cooperation, to execute this contract in accordance with the following terms and conditions.

Chapter One. General Principles

CITS, having been authorized to negotiate and conclude contracts with foreign corporations to build and operate hotels in Beijing, is a lawfully registered tourist enterprise of the People's Republic of China. ESPDC, a corporation registered in Bermuda with Cyrus S. Eaton Jr. as its Chairman of the board, is a corporation for construction and engineering and other related work specifically organized for the construction and operation of hotels in China.

Both parties agree to form a hotel joint venture general partnership (the 'Joint Venture') for the purpose of building and operating a modern, international, first-class hotel of approximately 1000 rooms in Beijing. The hotel shall be named the Great Wall Hotel of Beijing (hereinafter referred to as the 'Hotel').

According to the provisions of Article 2 of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment, the capital, profits due to ESPDC and its other lawful rights and interests are protected by the Chinese government, and all activities of the hotel joint venture must observe the laws, decrees, and the regulations concerned of the People's Republic of China.

The objective of both parties is to improve the Chinese tourist industry by providing foreign tourists with comfortable and convenient accomodations. During the construction period, both parties will endeavor to lower the construction cost through joint efforts while maintaining the highest construction quality standards. After the opening of the hotel, during the period of joint operation, through highly efficient business management, both parties desire to achieve satisfactory economic results.

Chapter Two. The Form of Cooperation

CITs shall prepare the construction site. ESPDC shall be responsible for financing the required total project cost (including costs incurred in China) and interest during construction. The financing, to be arranged by ESPDC, shall take the form of a loan in U.S. dollars from the Nordic Bank Limited to the hotel joint venture with a favorable interest rate. Financing costs (including all fees to be paid to the Nordic Bank Limited for making available the loan and the cost of credit insurance if necessary) will be calculated and charged at the most favorable rate mutually agreed upon and at actual cost, but the total amount should not exceed 2,000,000 U.S. dollars. Any excess is to be borne by ESPDC. The total financing, including principal and interest, will be paid back in periodic installments out of the gross revenue of the hotel over a period of ten (10) years, commencing on the opening of the hotel.

After the completion of the construction of the hotel, both parties will jointly operate the hotel for ten(10) years. During these ten (10) years of operation, both parties shall share the responsibility for operating the hotel and shall share the hotel's profits and losses. The annual net profit of the hotel will be divided according to the following proportion:

CITS	51%
ESPDC	49%

If there is any loss, the loss will be shared according to the same proportion. All accounts on profits and losses shall be settled and paid annually. The hotel joint venture shall pay income tax on its taxable income and other taxes in accordance with the provisions of the Tax Laws of the People's Republic of China.

The period set for the joint operation of the hotel by both parties is ten (10) years of uninterrupted operations, commencing on the formal opening date of the hotel. When the period set for the joint operation comes to an end, all the hotel joint venture accounts for profits or losses shall be settled and paid as of that time. Thereupon, the joint venture relationship of both parties shall terminate. Thereafter, the total assets, rights and interests of the hotel joint venture shall be solely owned by CITS without further compensation to ESPDC.

During the period of joint construction and operation of the hotel, both parties will together form the hotel joint venture's board of directors (hereinafter referred to as the 'Board') as its supreme authorized organization. The scope of the board's authority is set forth in Chapter VII.

During the period of the construction of the hotel, service provided or requested to be provided by either party shall be included in the hotel's construction cost, after negotiation and agreement by both parties.

In the event that ESPDC cannot proceed with the designing, construction or operation of the hotel due to reasons beyond its control, CITS will at ESPDC's request pay an amount equal to the balance of the loan obligation of principal and interest outstanding at that time.

During the design and construction period of the hotel, if the design and construction cannot proceed due to reasons caused by ESPDC, ESPDC shall bear the total responsibility for all financial losses and damages caused by it. In this event CITS and ESPDC will then still continue to be jointly responsible for repayment of the loan principal and interest.

Chapter Three. The Name Of The Joint Venture And Its Registration

The formal name of the hotel joint venture responsible for the construction and operation of the hotel by both parties is the Great Wall Hotel joint venture of Beijing (hereinafter referred to as the "joint venture"). The joint venture shall be registered with the General Administration for Industry and Commerce of the People's Republic of China and will start operations after approval and licensing. The joint venture's office shall be located in Beijing city in the People's Republic of China.

Chapter Four. The Address, Scope And Construction Standard Of The Hotel

The hotel shall be on the site, which has been mutually agreed, located on Dung San Huan North Street, Chao Yang District, Beijing city. It occupies a plot of land not exceeding 15,000 square meters.

The hotel will have approximately 1000 guest rooms, necessary public rooms, and accessory rooms. The total area for construction of the hotel is approximately 78,000 square meters.

Specific items will be discussed in detail and mutually agreed on after submission of the preliminary design.

The construction standard for the hotel should be modern and currently international first-class, that is, practical, comfortable, and good looking. The standard of the completed hotel shall not be lower than the standard of the Dallas Hyatt Regency Hotel in the United States. Detailed standards will be discussed and agreed upon in the outline description in the preliminary design.

The design of the hotel must meet the earthquake resistance standard, according to the new Chinese earthquake intensity scale, of eight (8) degrees (which is equal to eight (8) degrees on the modified Mercalli scale).

The total project cost of the hotel, denominated in U.S. dollars, must be controlled within 72,000,000 U.S. dollars and the average construction cost for each room must be controlled at less than 70,000 U.S. dollars. The above stated project cost must include: pre-construction costs, construction cost (including the design and construction cost for an air raid shelter), costs of connecting piping and wiring to city provided utilities and all other public facilities, design cost, costs for various technical services, furniture, fixtures, and equipment costs, costs of transportation in China, project insurance premiums, financing costs, working capital for one month, training costs, pre-opening costs, various contingency funds, and other agreed upon costs. The above does not include interest during construction.

The budget of the project cost after preparation of the developed preliminary design shall be within the above-mentioned controlled amount of 72,000,000 U.S. dollars.

Chapter Five. The Use Of The Loan And The Repayment Of Principal And Interest

The total loan amount for the construction of the hotel will be arranged by ESPDC according to paragraph one of Chapter Two. After this contract comes into effect, the right to spend the proceeds of the loan shall be within the power of the board.

Both parties will draw up a mutually agreed budget based on the developed preliminary design and submit the budget to the Chinese government for approval. The construction management team, based upon the approved budget, shall prepare a drawdown plan and schedule for use of the project funds.

Within the scope of the above said budget, after board approval of the budget, the construction management team leader and deputy construction management team leader, according to the practical needs of the construction work and after joint examination and agreement, will jointly execute a voucher authorization payment.

Interest on the loan outstanding shall be calculated semiannually starting from the day of the first drawdown, according to the amount actually drawn. Repayment of principal and interest shall be made six (6) months after the formal opening day of the hotel, and semiannually thereafter. The total principal and interest shall be fully paid up by twenty (20) installments. Detailed provisions as to the principal withdrawal, calculation of interest, fees, repayment of principal and interest, etc. shall be decided separately through negotiations between the joint venture and the Nordic Bank Limited.

Chapter Six. Responsibilities Of The Parties

The responsibilities of CITS during the period of construction of the hotel are:

1. Preparation of the site for hotel construction, including the clearing of obstacles on and below the surface of the ground.
2. To supply relevant data from local sources required for the design of the hotel

3. Assist ESPDC in obtaining consultation and advice in regard to the design of the hotel from the relevent chinese departments concerned with design, construction, and municipal planning.
4. To submit and process for approval the contract and hotel design documents and process the hotel joint venture's registration.
5. In accordance with the mutually agreed upon material and equipment procurement plan, CITS shall participate in the procurement work for material and equipment imported from abroad and the awarding of contracts after bidding.
6. In accordance with the mutually agreed upon material and equipment procurement plan, CITS shall be responsible for organizing the supply of locally available resources.
7. To apply to the relevant department concerned of the Chinese government for preferential treatment as to tax exemption for material and equipment to be imported and to undertake to clear through customs imported materials and equipment, and for transport within the country of such materials and equipment, and for their storage and preservation within China.
8. CITS shall process the visa applications for those personnel from abroad who have been approved by the hotel board to come to Beijing to participate in the hotel construction and will arrange for their accommodation, medical care and transportation.

The responsibilities of ESPDC during the period of construction of the hotel are:

1. ESPDC shall be responsible for arranging the total financing necessary for the construction of the hotel as clearly specified in paragraph one of Chapter II of this contract.
2. ESPDC shall bear the responsibility for the design work of the hotel. Preliminary designs and developed preliminary designs will be provided by ESPDC, and after agreement by CITS and the review and approval by the relevant departments of the Chinese government, then working drawings shall be provided. ESPDC shall also be fully responsible for the use of advanced technology and equipment in the hotel, the completeness of the design content and drawings, and the reliability of the design of the hotel.
3. To send engineering and technical personnel who are responsible for the design of the hotel to the construction site to deal with questions concerning the design of the hotel during construction and to check the construction situation in order to assure its conformity to the design drawings.
4. In accordance with the mutually agreed upon material and equipment procurement plan, the ESPDC personnel together with CITS personnel assigned shall jointly procure material and equipment for import and ESPDC shall be responsible for its transportation to the Chinese port designated by CITS. The procurement of material and equipment for import will generally be done through internationally accepted practices for bidding. Any commission or discount given by sellers shall be remitted in full to the joint venture.
5. ESPDC shall be responsible for the preparation of documents and information concerning requests for bids on the supply of material and equipment to be imported from foreign countries.

The responsibilities of CITS prior to the operation of the hotel and during the operation of the hotel are:

1. To employ staff and workers in accordance with the pertinent laws and regulations of the Chinese government and the resolutions of the hotel board.

2. At an appropriate time prior to the opening of the hotel, nominate candidates from CITS for participation in the hotel management.
3. Process visas for foreign specialists from abroad whose employment has been approved by the board.
4. Arrange for living accommodations, medical care and transportation for the above personnel prior to the operation of the hotel.

The responsibilities of ESPDC prior to the operation of the hotel and during the operation of the hotel are:

1. Testing all systems and equipment (as a whole) and bringing them into conformity with the design requirements set forth in paragraph three of Chapter Four of this contract.
2. ESPDC shall be responsible for the system integrity and completeness of all equipment and its installation in the hotel prior to the opening. If, upon inspection, any mistake or omission is discovered, ESPDC shall be responsible for the adoption of suitable measures for a speedy remedy.
3. At an appropriate time prior to the opening of the hotel, nominate candidates from ESPDC for participation in the hotel management.
4. Proposal of a plan for training of hotel staff. After the proposal has been approved by the board, ESPDC shall be responsible for carrying out the training.

Chapter Seven. Board of Directors

CITS and ESPDC both have agreed to form the board of directors of the joint venture immediately after the effective date of this contract. The board will consist of seven members with four members designated by CITS and three members designated by ESPDC. The Chairman of the board will be selected by CITS and the Vice Chairman of the board will be selected by ESPDC.

The board shall be the supreme authorized organization of the joint venture. In dealing with major issues, both parties shall make decisions in accordance with the principle of equality, mutual benefit and friendly consultation.

During the construction and operation of the hotel, the board shall act, in accordance with the pertinent policies and laws of the Chinese government, on the following major issues:

Examination of the design, approval of the plan for availment of funds during construction, the construction plan and progress, financial projections and statements, labor wage plans, and employee incentive programs, discuss and decide hotel operation management policy, appoint or dismiss the leader, deputy leader or other personnel of the construction management team, hotel manager, deputy manager, chief accountant, and auditor, etc. and review, discuss and decide on employment of personnel from abroad with regard to their number, duration of employment, responsibilities and compensation.

Chapter Eight. Construction Management Team

From the effective date of this contract until the completion of construction and the opening of the hotel for business, all specific construction preparatory work of the hotel shall be carried out under the responsibility of the hotel construction management team to be set up by the board. This team shall be composed of five persons, three from CITS and two from ESPDC. This team shall have one team leader to be nominated by ESPDC. The deputy team leader shall be nominated by CITS. Members of the construction management team shall be appointed by the board. During the construction period, the construction management team shall report directly to the board.

The construction management team shall directly lead and supervise the entire hotel project's design and management, the signing of construction contracts and subcontracts for the project, the procurement of relevant imported material and equipment, the purchase and supply of relevant domestic goods, the formulation of the project's construction progress plan, formulation of the plan for the availment of funds during construction, the control of the entire project's budget and expenditure, the formulation of the technology control methods, the safekeeping and organization of all documents, drawings, records and information during construction, and other related matters. The organization and personnel structure of the construction management team shall become effective upon approval by the board following mutual agreement between CITS and ESPDC.

Each party shall propose a budget for its portion of the construction management team expenses, such as salary, food and accommodation, transportation, etc. according to the actual situation. Such a budget shall be included in the project's budget after mutual consultation and agreement. Thereafter each party shall be individually responsible for insuring the conformity of its own side to its budget.

CITS and ESPDC shall each appoint several technical persons to form a technical group which shall report directly to the construction management team. This technical group is responsible for examination and approval of design changes, the supervision of construction quality, and the inspection of material and equipment for the project.

The construction management team may make recommendations regarding the distribution of any reserve or contingency fund based on the actual situation of the project. After these recommendations are approved by the board, they can then be implemented.

The construction management team will be dissolved upon the approval of the board after the entire hotel project has been officially examined and accepted and transferred for business operation and after it has handed over to the office of the hotel manager all the documents, records, and materials in its custody during the construction period.

Chapter Nine. Design (Omitted)

Chapter Ten. Construction And Inspection Upon Acceptance (Omitted)

Chapter Eleven. Operation Management

During the period of joint operation after the hotel has opened officially for business, the daily operation and management of the hotel shall be run by the manager and the deputy manager under the supervision of the board. During the first three years, ESPDC's designee shall be the manager and CITS' designee shall be the deputy manager. At any time during this period, if CIT's deputy manager becomes capable of managing all facets of the hotel's operations, ESPDC shall turn over the manager's position to the deputy manager. In any event, this transfer of authority shall occur within three years. At tne time of transfer, ESPDC shall designate the deputy manager.

The hotel may set up various departments under the manager and the deputy manager as required. Within the first three years, all the chief positions of the various staff functions shall be taken by designees of ESPDC. CITS' designees shall take all the appropriate deputy positions. During this period, ESPDC should transfer the relevant chief positions to any deputies as soon as they have become capable of the management work in the area. By the end of third year, all the chief positions of the various Departments should be assumed by designees of CITS.

Hotel employees (including cooks, service attendants and various technical workers), except for a limited number of chefs who may be hired from abroad, should all be hired in China in accordance with the appropriate Chinese policies and regulations.

The organization and personnel structure of the hotel joint venture, shall be formulated by the board separately. The salary, welfare and benefits, etc. of the hotel staff shall be formulated by the board separately in accordance with the pertinent laws and regulations of China.

At the beginning of each year, the manager and the deputy manager shall submit an annual operational plan to the board for review and approval and, upon approval, shall implement the same.

The fiscal year of the hotel shall follow the commonly practiced fiscal year in China, which is from January to December 31 of each year. The accounting system for the hotel shall be determined by the board separately.

The positions of chief accountant and auditor shall be assumed by designees from CITS and ESPDC, respectively. Such positions shall rotate periodically. The chief accountant shall submit to the board a budget at the beginning of each year and a financial statement at the end of each year.

Profits and losses of the hotel shall be calculated at the end of each fiscal year. The distribution of profits and losses of the current year shall be settled and paid immediately after the approval of the financial statements by the board.

The method of distributing net profits of the hotel is set forth in paragraph two of Chapter Two.

During the construction period of the hotel, CITS shall apply for exemption from payment of the land usage fee. After the hotel is in operation, it should pay three percent of the annual business revenue as a fee for the use of the land.

During the period of joint operation of the hotel, four percent of the business revenue shall be included in the operational cost of the hotel as the expenses of the board and be divided between CITS and ESPDC in the ratio of 51 percent to 49 percent respectively.

After the completion of the hotel, the fixed assets and other assets which are equal to the total investment shall be totally amortized or depreciated during the period of joint operation. Each year a reasonable reserve fund will be set aside for major repairs and renovations. When the period of joint operation ends, any surplus in this fund over the actual cost will be distributed between CITS and ESPDC as profit in the ratio of 51 percent to 49 percent, respectively.

Salary and other labor compensation for all hotel employees shall be taxable in accordance with the Chinese government's Personal Income Tax Law.

The net profit distributed to ESPDC after payment of income taxes, the income received by personnel from abroad, Hong Kong and Macao after payment of personal income taxes, and the principal and interest repaid to Nordic Bank Limited by the joint venture, may be remitted abroad through the Bank of China in accordance with the Foreign Exchange Regulations of the People's Republic of China.

Chapter Twelve. Insurance

CITS and ESPDC agree that the joint venture shall purchase in U.S. dollars the following insurance policies from the People's Insurance Company of China. During the construction period, contractors' all risk with third-party coverage, transportation insurance for material and equipment imported from abroad, and wherever possible cargo insurance from the People's Insurance Company of China for material and equipment imported from abroad. Such premiums shall be included in the total project cost of the hotel. After the start of operations, insurance coverage on the hotel assets should be obtained and the cost of such premiums shall be paid out of the business revenue.

ESPDC should provide its staff with sufficient insurance coverage. The cost incurred shall be borne by ESPDC.

Chapter Thirteen. Arbitration (Omitted).

Chapter Fourteen. Effective Date, Miscellaneous Matters.

This contract has been signed by representatives empowered by each of the parties on the 26th day of October, 1979. After execution, this contract shall be submitted to the Foreign Investment Commission of the People's Republic of China for approval.

Any amendments to this contract should be made in writing and signed jointly by the authorized representatives of both parties and be submitted to the Foreign Investment Commission of the People's Republic of China for approval. Such amendments shall then become integral parts of this contract upon approval.

No party shall, without prior written consent of the other party, transfer to a third party any rights or obligations of this contract.

During the performance of, this contract, the following regulations concerning the use of language for documents shall be observed:

1. Any document presented to ESPDC by CITS shall be in Chinese, which will be definitive. An English translation shall be appended.
2. Any document presented to CITS by ESPDC shall be in English, which shall be definitive. A Chinese translation will be appended.
3. During the period of joint construction and operation of the hotel, both English and Chinese shall be working languages.

Chapter Fifteen. Legal Address, Authorized Representatives (Omitted).

JOINT VENTURE CONTRACT FOR ELEVATOR COMPANY

The Agreement on the Establishment of Joint Venture Elevator Company in the People's Republic of China among China Construction Machinery Corporation (hereinafter referred to as CCMC) and Schindler Holding AG (hereinafter referred to as Schindler) and Jardine Schindler (Far East) Holdings, S.A. (hereinafter referred to as JS)

Hereinafter jointly referred to as the parties on the establishment of a joint venture elevator company in the People's Republic China (PRC).

Whereas, the parties to this agreement are willing to cooperate in order to increase the capacity of the Chinese elevator, escalator and passenger conveyor industry, up-date and up-grade its products and manufacturing methods, generate products suitable for domestic and export use in order to generate foreign exchange, improve installation and maintenance methods for elevators, escalators and passenger conveyors, carry out appropriate research and development in the field of elevators, and passenger conveyors.

Whereas, this objective can best be achieved by the formation of a joint venture company for the purpose of manufacturing, developing, selling, installing and maintaining elevators, escalators, passenger conveyors, auxiliary equipment and parts and components thereof (all or any of which are hereinafter included under the designation 'the PRODUCT').

Now therefore, in accordance with the principle of equality and mutual benefit, the three parties enter into the following agreement:

1. Incorporation.

1.1. The parties agree to incorporate a joint venture company (hereinafter referred to as 'the JVC') with limited liability in the territory of PRC within the framework of the law of the People's Republic of China on joint ventures using Chinese and foreign investments ('the LAW') and other Chinese laws concerned.

1.2. The name of the JVC shall be China-Schindler Elevator Company Limited.

1.3. The participants shall have no liability of any sort for the debts or obligations of the JVC. The liability of the participants is limited to making the contibutions to the capital required pursuant to this agreement and the Articles of Association of the JVC.

1.4. The principal purposes for which the JVC is established are the manufacture, development, sale, installation and maintenance of the products.

2. Contribution and equality shares.

The parties shall contribute to the JVC and share equality participation in the JVC in a ratio of 75 percent (CCMC) and 25 percent (Schindler and JS) in the following manner:

2.1. CCMC shall inject the Shanghai Factory (buildings, machinery, inventory but excluding land) and the old Beijing Factory (machinery, inventory but excluding buildings and land) which injection shall be valued for the purposes of equality participation at US dollars 12 million.

For accounting and other purposes, however, the abovementioned current assets and liabilities are those in the balance sheet as per incorporation date. The future financing of the JVC's working capital shall basically remain the same as in the past.

2.2. The foreign parties shall inject a total of US dollars 4 million in cash, Schindler to contribute the sum of US dollars 2.4 million and JS to contibute the sum of US dollars 1.6 million. .

2.3. All parties shall inject all their respective contributions within five days after the issuing of the operation's license for the JVC.

2.4. If so required, Schindler agree to provide additional financing in the form of a long-term loan in Swiss Francs at most favourable market conditions in an amount equal to Renminbi yuan 5 million which shall be made in payments of Renminbi yuan 3 million in the second and of Renminbi yuan 2 million in the third year of the JVC and totally repaid in the eighth year.

3. Other services by foreign parties and additional agreements.

3.1. The JVC, through the agreements mentioned below, shall have access to the entire present and future technology and know-how in respect of the design, manufacture, installation and maintenance of Schindler elevators, escalators and passenger conveyors. To ensure the complete transfer of know-how, Schindler will provide.

—Product design.
—Manufacturing techniques and methods.
—Production and quality control methods.

—Factory design and remodeling.
—Installation and maintenance methods.
—Engineering assistance.

3.2 The following agreements which are annexed hereto and form an integral part of the present agreement shall be signed immediately after the incorporation of the JVC among the JVC and Schindler, Jardine Schindler and/or Inventio (a wholly owned subsidiary of Schindler) respectively:

—License agreement.
—Consulting agreement.
—Maintenance franchise agreement.
—Export agency agreement.

4. Duration and termination .

4.1 The corporate existence of the JVC will commence on the issue of an operations license under Article 3 of the LAW and will continue for an initial period of 20 years but may be extended for further periods of five years by the written agreement of all of the then participants.

4.2 Not less than four years prior to the expiration of the initial period of 20 years or any subsequent extended period of five years, the then participants in the JVC shall commence discussion regarding the extension of the period of existence of the JVC and in the event of their agreeing upon such extension, they shall record such agreement in a written document signed by all of them not later than three years before the expiry of the then current period or by such later date as all of them may agree.

4.3 If a written agreement for the extension of the period of existence of the JVC is not signed by three years prior to the expiration of the then current period of existence (or by such later date as all of the then participants may agree), the JVC shall terminate at the end of such current period of existence and the provisions of clauses 4.5 and 4.6 shall then apply.

4.4 Notwithstanding the foregoing, it shall be open to the then participants to agree at any time to extend the period of existence of the JVC for more than one period of five years or for a single period longer that five years if they so agree and if the law then permits.

4.5 Upon termination of the present agreement, the shares of the foreign parties will be repurchased by CCMC. The repurchase price for the foreign parties' share shall be the net equality of the JVC to be determined by a balance sheet effective on the date of termination multiplied by the share factor plus a percentage to be negotiated and to reflect the future profitability of the JVC. This final percentage shall take into account the degree of smoothness of the JVC progress.

4.6 After termination of the present agreement, the name of the JVC shall be changed to exclude any allusion to Schindler or JS. CCMC agree not to use any Schindler or JS trademark after termination of the present agreement without written consent by Schindler or JS respectively.

5. Extension of the JVC.

5.1 It is agreed that a further objective is to incorporate the Tientsin operation within the JVC at a later stage when circumstances permit to do so.

5.2 The parties shall work together with a view to making Tientsin a manufacturer and supplier to the JVC under sub-license from the JVC as soon as practicable. All sales of the products made by Tientsin under such sub-license shall be made through the JVC organization and, if overseas, in the manner set out in the export agency agreement. If Tientsin agrees to become a sub-licensee of, and manufacturer and supplier to the JVC, the JVC shall grant the necessary sub-license to Tientsin and

Tientsin engineers will have the opportunity of taking part in JVC training courses and programmes.

5.3 Further participants may be included in the JVC with the consent of the then participants of the JVC.

6. Sales, installation and maintenance.

6.1 The JVC shall sell the products within the PRC and abroad. Sales targets shall be arranged in accordance with the production objectives contained in the joint proforma.

6.2 During the period of validity of the present agreement plus an additional and consecutive period of five years, JS and Schindler shall be the exclusive agent for the JVC for the sale ouside of PRC of the PRODUCTS manufactured by the JVC. Common target of all parties is the highest possible market share in the JS area for the products manufactured by JVC in order to acquire as much export business as possible. By unanimous decision of the board of the JVC, the JVC may export directly to countries in which neither JS nor Schindler are represented. All export activities of the JVC shall be governed by the export agency agreement.

6.3 The JVC shall carry out installation and maintenance within the PRC. In order to strengthen the JVC, the JVC shall have the exclusive right for installation and maintenance for elevators, escalators and passenger conveyors within the PRC which are imported under the direct control of or under a contract with CCMC unless the clients install and/or maintain the products completely with their own personnel.

The JVC shall with the help of CCMC assist clients and organisations to acquire Schindler products to be installed in their buildings. If for a particular contract Schindler and JS require sales assistance from the JVC, a commission to be negotiated shall be paid to the JVC.

6.4 Installation and maintenance abroad will be the responsibility of JS or Schindler. It is intended to utilise qualified JVC and CCMC technicians for work abroad.

JS or Schindler, respectively, shall pay an annual maintenance fee for each elevator or its equivalent exported for the average contract life of ten years paid in foreign currency according to the export agency agreement appended.

7. Dividends, reinvestment policy .

7.1 The gross profit (profit before tax) of the JVC shall be determined according to acknowledged accounting principles as applied in the joint proforma. The income tax of the JVC shall be paid out of this gross profit.

7.2 After payment of the income tax, the payment to the bonus and welfare fund shall be made as from time to time determined by the board of directors of the JVC in accordance with the articles of association. The remaining proceeds shall be available for declaration as dividends.

7.3 For the first three years, the parties agree to reinvest in the JVC 100 percent of the dividends declared and for the following three years 50 percent of the dividends in order to expand the JVC. At the end of six years the participants will reconsider the reinvestment policy.

8. Taxes.

8.1 The JVC shall be exempted from income tax for the first three profit making years in accordance with Article 7 of the LAW.

8.2 For a minimum period of 10 years the income tax shall not exceed 31.5 percent including local taxes if the after tax profit does not exceed 20 percent on net equality.

8.3 For a minimum period of 10 years withholding tax on dividends actually paid to the parties shall not exceed 10 percent. However, no withholding tax shall be levied on the dividends reinvested into the JVC according to Article 7 above. Furthermore, income taxes levied from the JVC shall be restituted to the JVC in proportion of the dividends reinvested into the JVC in accordance with Article 7, paragraph 3 of the LAW.

8.4 No tax shall be levied by the PRC on any income of expatriate executives not paid by the JVC. To the extent that the income of expatriate executives is paid by the JVC, the tax rate thereon shall not exceed either the rate applied to Chinese national persons resident and employed in China or the rate of income tax applied to the JVC.

8.5 There shall be no other taxes for the JVC and the three parties.

8.6 All fees and royalties are net of tax.

8.7 There are no other tax liabilities, nor are there any other liabilities of the JVC, than those shown on the balance sheet as per incorporation date.

9. Leases of land, buildings and machinery.

9.1 Factory land shall be leased to the JVC. The JVC shall lease the buildings of the old Beijing factory and the new Beijing factory to the extent made necessary by production requirements. Part of the machinery necessary for production also shall be leased by the JVC.

9.2 The leasing rate of the land shall be at a rate of Renminbi yuan 15.00 per square metre per year for a minimum period of ten years.

9.3 The leasing rate of the buildings shall be at a rate of 10 percent of construction costs per year for a minimum of ten years.

9.4 The leasing rate of machinery shall be at a rate of 10 percent of the agreed value per year for a minimum of ten years.

9.5 The JVC reserves the right to purchase the buildings of the new Beijing factory at a price to be negotiated.

10. Joint proforma, raw material, water and energy supply.

10.1 The joint proforma sets binding targets for the JVC concerning units produced, installed and maintained and their costs. Domestic prices shall be as low as is consistent with ensuring the JVC a reasonable profit, i.e. not exceeding and not less than 15 per cent net profit after tax on total turnover of the JVC. Export prices shall be set according to the export agency agreement

10.2 In order to attain the goal of doubling the present production within five years and quadrupling it within eight years, CCMC shall secure the adequate supply of the raw materials, including the raw materials needed for the purposes mentioned in Article 6.

10.3 Raw material, energy and water supply shall be available to the JVC at the same price as to Chinese public corporations.

11. Domestic loans and transfer of foreign currency.

11.1 Domestic loans shall be available to the JVC at the same interest rates as they are given to Chinese public corporations.

11.2 Transfers of foreign currency into the PRC shall be free from any restriction and tax whatsoever.

11.3 Transfers of foreign currency out of the PRC in connection with the agreements shall be free from any restriction. If required by law an amount, not exceeding 10 per cent, may be levied on the following categories of payment if made in foreign currency, borne by the JVC.

—License fee.
—Royalties.
—Interest on debt.
—Consulting fee.

The JVC will make every effort to minimise such levies.

12. Organs and management of the JVC.

12.1 The JVC board shall consist of eight members, six of which, including the chairman, shall be appointed by CCMC, one by Schindler to act as vice-chairman and one by JS. Decisions regarding changes to the Articles of Association or board instructions as provided in the Articles of Association shall require majority approval of two thirds of the votes whereby one of the approving votes has to be by the representative of Schindler or JS.

12.2 An engineering, production and administration management shall be established in the factories, aided by a standing Schindler project team in Switzerland.

12.3 A JVC head office shall be established in Beijing to manage the JVC affairs and handle communications with Schindler, JS and the factories.

13. Employment, discharge and wages of labour force.

13.1 The board of directors shall have the right to employ and dismiss workers and executives of the JVC and shall give consideration to the advice and proposals of the Schindler project team when taking decisions on the employment and discharge of workers and executives of the JVC.

13.2 The labour force of the JVC shall be yearly adapted to the needs of the JVC regarding the number and the quality of work and in reference to the joint proforma.

13.3 The wages paid by the JVC shall be in reference to the joint proforma.

14 Insurance.

All insurable risks of the JVC shall be insured in the PRC.

15 Visa, work permits and import licenses.

CCMC agree to be responsible for procuring the timely issue of all visas, work permits, import licenses and the like which are necessary for the purposes of the JVC.

16. Settlement of disputes.

16.1 Any disputes arising among the parties to this agreement shall be settled by the board of the JVC.

16.2 If the board should fail to resolve such a dispute, it shall be brought in principle before the ordinary court of the domicile of the actual defendant.

16.3 However, if one of the parties to the dispute so desires it shall be determined by arbitration in London in accordance with the arbitration rules of the International Chamber of Commerce.

17. Contractual language.

This agreement is made in both Chinese and English. The Chinese and English versions of this agreement shall have equal status in law. This agreement is subject to approval by the respective boards of CCMC, Schindler Holding AG and Jardine Schindler (Far East) Holdings S.A.. Final date for approval shall be the 20th day after signature of this agreement.

ARTICLES OF ASSOCIATION OF CHINA-SCHINDLER ELEVATOR CO, LTD (JVC)

Being a joint venture company incorporated with limited liability within the framework of the law of the People's Republic of China (PRC) on joint ventures using Chinese and foreign investment ("the LAW") and pursuant to a joint venture agreement ("the JOINT VENTURE AGREEMENT") dated 19 March 1980 and made among the participants. Chinese Participant: China Construction Machinery Corporation, (CCMC). Foreign Participant: Schindler Holding AG, (Schindler) and Jardine Schindler (Far East) Holdings S.A., (JS).

1. Name .

1.1 The name of the JVC is China-Schindler Elevator Co, Ltd (Chinese name).

1.2 The name of the JVC must be used in connection with all of the JVC's affairs.

1.3 If Schindler ceases at any time to be a participant in the JVC, the name of the JVC will be changed to exclude any reference to SCHINDLER or any name similar thereto but otherwise the name of the JVC shall not be changed except with the prior written consent of all of the participants.

2. Status and nature of the JVC.

2.1 The JVC is a joint venture company and is incorporated with limited liability in accordance with Article 4 of the LAW..

2.2 The participants shall have no liability of any sort for the debts or obligations of the JVC. The liability of the participants is limited to making the contributions to capital required by Clause 4 of these articles.

3. Duration.

3.1 The corporate existence of the JVC will commence on the issue of an operations license under Article 3 of the LAW and will continue for an initial period of twenty years.

3.2 The period of corporate existence may be extended for further periods of five years by the written agreement of all of the participants as provided in the JOINT VENTURE AGREEMENT.

4. Registered capital.

4.1 The registered capital of the JVC shall be US $16,000,000.00.

4.2 The registered capital of the JVC shall be contributed as follows:

4.2.1 By CCMC- US $12,000,000.00 to be satisfied by contribution to the JVC of the buildings, machinery and inventory of the Shanghai factory and the machinery and inventory of the old Beijing factory in accordance with Clause 2.1 of the JOINT VENTURE AGREEMENT.

4.2.2 By SCHINDLER- US $2,400,000.00 to be satisfied by payment to the JVC in cash, and

4.2.3 By JS- US $1,600,000.00 to be satisfied by payment to the JVC in cash.

4.3 The respective capital contributions will be recorded in the JVC's accounts and a certificate of receipt therefor shall be issued by the chief accountant or treasurer.

4.4 The liability of the participants shall be limited to the unsatisfied amount of their respective contributions.

4.5 The participants will share in the profits of the JVC in the following proportions:

CCMC	75%.
SCHINDLER	15%.
JS	10%.
Total	100%.

5. Purposes of the JVC.

5.1 The principal purposes for which the JVC is established are the manufacture, development, sale, installation and maintenance of elevators, escalators, passenger conveyors, auxiliary equipment and parts and components thereof.

5.2 For the purpose of exporting its products and generating foreign exchange, the JVC will appoint SCHINDLER and JS as its sole agents and distributors in accordance with the terms of the export agency agreement annexed to the JOINT VENTURE AGREEMENT.

5.3 For the purpose of achieving its principal purposes the JVC is empowered to do the following things:.

5.3.1 To employ, remunerate and dismiss all types of qualified, skilled, semi-skilled and unskilled staff, including specialist technicians, engineers, physicists, accountants and administrators.

5.3.2 To carry out research and experimental work.

5.3.3 To lease, hire, purchase or otherwise acquire factory premises.

5.3.4 To purchase or otherwise acquire plant, equipment, tools, machinery, parts and raw materials.

5.3.5 To acquire and deal with patents, patent rights, copyrights, inventions, trademarks, processes and licenses.

5.3.6 To open and operate current and deposit accounts, with the Bank of China and/or other bankers within or outside the PRC, and draw with cheques, bills of exchange, promissory notes and other negotiable instruments.

5.3.7 To borrow monies, from the Bank of China and/or other bankers and financiers within or outside the PRC and to secure and discharge any of the JVC's debts in such manner as may be appropriate, including by the creation and issue of debentures, loan stock and other securities.

5.3.8 To insure the undertaking of the JVC and its staff.

5.3.9 To acquire and deal with shares, securities or investments in any other company, firm or entity (whether within the PRC or otherwise) and purchase or otherwise acquire and undertake all or any part of the business assets and liabilities of any other company firm or entity carrying on business similar to that of the JVC.

5.3.10 To commence or join as a party to arbitration and court proceedings, and.

5.3.11 Generally do all such things as may be conducive or incidental to the principal purposes of the JVC.

5.4 The business of the JVC will be conducted and the powers of the JVC will be exercised in such manner as ensures that the terms and spirit of the JOINT VENTURE AGREEMENT and the other agreements are observed and adhered to.

6. The board of directors.

6.1 The board of directors shall consist of eight members as follows:

6.1.1 The Chairman.
To be as from time to time appointed by CCMC.

6.1.2 The Vice-chairman.
To be as from time to time appointed by SCHINDLER.

6.1.3 Six Directors
Five to be as from time to time appointed by CCMC and one to be as from time to time appointed by JS.

6.2 A participant may at any time and from time to time appoint any person to be an alternate director to act in place and on behalf of any board member appointed by it and may at any time remove from office any alternate director so appointed and appoint another in his place.

6.2.1 An alternate director shall cease to be an alternate director if the director whom he represents ceases for any reason to be a director. All appointments and removals of alternate directors shall be made by notice in writing sent to or left with the JVC and signed by or on behalf of the participant making or revoking the appointment.

6.2.2 An alternate director shall be entitled to attend and vote as a director at any meeting of the board of directors at which the director in respect of whom he is appointed an alternate director is not personally present and generally at such meeting perform all the functions of the director in respect of whom he was appointed.

6.2.3 It shall be the responsibility of each director to furnish to his alternate director copies of all notices and other documents necessary for the performance by the alternate director of his duties hereunder.

6.2.4 If at any meeting of the directors, a director and his alternate director are both unable to attend, the director (but not his alternate) may for the purposes of such meeting appoint a proxy to represent him at such meeting and to vote thereat on his behalf. Every appointment of a proxy shall be in writing signed by the director by whom it is made and shall be sent or delivered to the chairman of the meeting of the board of directors for which it is given at or prior to the commencement of such meeting.

6.2.5 One director may be appointed as alternate director or proxy for another director and the same person may be appointed as alternate director or proxy for more than one director. An alternate director or proxy shall have one vote for each director he represents and an additional vote if he is also a director in his own right.

7. Powers of the board of directors.

7.1 The overall management, supervison and control of the business of the JVC shall be the responsibility of the board of directors who shall meet together regularly for such purpose. In particular the board of directors shall decide all matters relating to:

7.1.1 Production and marketing programmes including the establishment of agencies within the PRC.

7.1.2 Development and research programmes.

7.1.3 Expansion programmes

7.1.4 The budget of the JVC and the JVC's working capital.

7.1.5 Any borrowing by the JVC.

7.1.6 The application and distribution of the JVC's profits.

7.1.7 The appointment, terms of reference, remuneration and dismissal of the officers of the JVC.

7.1.8 The appointment, remuneration and dismissal of staff and the size of the workforce required by the JVC from time to time.

7.1.9 The extent to which welfare benefits are to be provided for staff.

7.2 The board of directors shall prepare management and operating instructions (BOARD INSTRUCTIONS) to be observed in the day-to-day conduct and administration of the JVC's business and will take steps to ensure that these are available to and observed by the management of the JVC.

7.3 If the JVC is unable to satisfy its working capital requirements from its own resources the board of directors shall, in so far as is prudent having regard to the JVC's financial position and prospects, fund working capital requirements by borrowing from banks and financial institutions within the PRC.

7.4 In performing their duties and exercising their powers the board of directors shall at all times act in compliance with the terms and the spirit of the JOINT VENTURE AGREEMENT.

8. Proceedings of the board of directors.

8.1 The board of directors shall meet together for the despatch of routine business at least (four) times in each year at regular intervals of (3) months. In addition special meetings of the board of directors may be convened at any time by the chairman or the vice-chairman for the despatch of any special business.

8.2 Unless otherwise unanimously agreed by the participants, meeting of the board of directors will be held at the JVC's principal place of business in Beijing.

8.3 The chairman shall determine the time and date of the first meeting. Otherwise, with the exception of special meetings of the board of directors which shall be convened by not less than foureen days' written notice (to be given by cable/telex to any board member not resident in Beijing or Shanghai), the time and date of each meeting of the board of directors shall be determined at a previous meeting.

8.4 The quorum for all meetings of the board of directors shall be not less than five members present in person or by their alternate directors or proxies and shall include the vice-chairman or the director appointed by JS or one of their respective alternate directors or proxies. No meeting shall be held at which a quorum is not present and CCMC shall be responsible for ensuring that all necessary visas are issued in good time to enable the vice-chairman and the director appointed by JS or their respective alternate directors or proxies to attend all meetings of the board of directors held in the PRC.

8.5 The agenda for each regular meeting of the board of directors shall be circulated to each of the board members not later than ten days before the date of meeting and in the case of a special meeting shall be stipulated in the notice of meeting.

8.6 Business at meetings of the board of directors will proceed in accordance with the agenda, each matter arising to be discussed appropriately and put to a decision by way of resolution.

8.7 Each board member (or, in his absence, his alternate director or proxy) shall have one vote and any resolution put to a meeting for a decision shall be passed if approved:

8.7.1 In the case of a resolution relating to the issue or amendment of board instructions and appointment of officers of the JVC by a majority of two thirds which must include the vote of the vice-chairman or the director appointed by JS (or their respective alternate directors or proxies), and.

8.7.2 In the case of a resolution relating to other business, by a simple majority which must include the vote of the vice-chairman or the director appointed by JS (or their respective alternate directors or proxies).

8.8.1 The board of directors will cause complete and accurate minutes (in both English and Chinese) to be kept of all meetings (including a copy of the notice of meeting) and the business transacted thereat. Minutes of all meetings of the board of directors shall be circulated to all of the directors as soon as practicable after each meeting and any director who wishes to propose any amendment or addition thereto shall submit the same in writing to the chairman not less than 48 hours prior to the date of the next meeting of the board of directors.

8.8.2 At each meeting, the first item on the agenda (whether or not specifically so stated in the agenda or notice) shall be the approval of the minutes of the immediately preceding meeting and the consideration of any amendments or additions thereto proposed by any director in accordance with Sub-paragraph 8.8.1.

8.8.3 The minutes of any meeting once approved shall be signed by the chairman and vice-chairman, entered into a minute book which shall be kept at the JVC principal place of business in Beijing or as otherwise decided from time to time, and shall be conclusive of the proceedings in question. Such minute book shall be available for inspection by any director or his authorised representative at all reasonable times and every director shall be furnished with a copy of every such signed minute.

8.8.4 The appointment and removal of members of the board of directors (and of any alternate director or proxy) shall be recorded in the minute books, together with an address for service of notices and agenda.

8.9 The remuneration of board members in that capacity and their alternate directors and proxies shall be the responsibility of the participants by whom they have been appointed. The remuneration of any director who is appointed an officer of the JVC shall in respect of such office, be paid by the JVC.

9. Officers of the JVC.

9.1 The board of directors shall select and appoint the general manager and other officers of the JVC and shall decide their remuneration and, in so far as not stipulated in these articles, their powers and duties.

9.2 The board of directors shall decide upon the number of personnel working in the head office of the JVC to be established in Beijing and will establish engineering production and administration teams in accordance with the terms of and for the purpose stipulated in the JOINT VENTURE AGREEMENT.

9.3.1 The officers of the JVC shall be appointed by the board of directors who shall have regard to any nominations which may from time to time be made by any of the participants.

9.3.2 The fact that a person is a board member or has been nominated as an alternate director or proxy shall not prevent him from being appointed to some other office.

10. Accounts.

10.1 Full, accurate and proper books of account and records shall be kept by the JVC in both Chinese and English in accordance with the SCHINDLER accounting manual with respect to:

10.1.1 All monies received and expended by the JVC.

10.1.2 All sales and purchases of goods by the JVC.

10.1.3 The assets and liabilities of the JVC with a view to providing a true and fair view of the JVC's affairs and an explanation of its transactions.

10.2 The JVC's books shall be maintained by the chief accountant in accordance with procedures, standard and practices stipulated in the JOINT VENTURE AGREEMENT and will be open for inspection at any time by any board member or this authorized representative.

10.3 In preparing the accounts at each financial year end, the chief accountant will make due provision for the JVC's tax liabilities if any and will have regard to the dividend policy of the JVC as stipulated herein and to the stipulations of the board of directors as to depreciation, staff bonuses and provisions for welfare funds.

10.4 The chief accountant shall procure that a full set of management accounts, including an unaudited profit and loss account and balance sheet are tabled before each regular meeting of the board of directors.

11. Financial year.

Until otherwise determined by the board of directors the JVC's financial year shall end on the day of in each year, and the first financial year shall commence on the date on which the JVC is licensed in accordance with the provisions of Article 3 of the LAW.

12. Audit.

12.1.1 The accounts of the JVC will be examined at the end of each financial year end by the auditor who will prepare an audited profit and loss statement for the period in question and a balance sheet as at the year end.

12.1.2 In addition the foreign participants shall have the right to appoint an external auditor.

12.1.3 The audit standards, procedures and practices to be applied by the auditor shall be those stipulated in the JOINT VENTURE AGREEMENT.

12.2.1 The audited accounts shall be completed within eighty days after each financial year end and shall be circulated forthwith to all board members.

12.2.2 Formal approval of the accounts shall proceed at the next occurring regular meeting of the board of directors.

13. Dividends and dividend policy.

13.1.1 The dividend policy of the JVC during the first six years of its existence will follow the policy stipulated in the JOINT VENTURE AGREEMENT.

13.1.2 In so far as the participants reinvest dividends in the JVC, in accordance with the terms of the JOINT VENTURE AGREEMENT, the amount of capital contributed by them to the JVC shall be increased and the appropriate accounting entries will be made in the books of the JVC and the appropriate receipts will be issued to each participant by the chief accountant or treasurer.

13.2 Thereafter the dividend policy of the JVC shall be as determined from time to time by the board of directors..

13.3 Any dividends which are paid by the JVC shall be distributed in accordance with the proportions stipulated in Clause 4.5 within one month after they have been declared by the board of directors.

14. Amendment of articles of association.

These articles of association may be amended by an instrument in writing signed by each of the participants.

15. Transfer of participation and new participants.

15.1 No participant may transfer all or any part of his participation in the JVC to a third party without the written consent of the other participants.

15.2 New parties may be invited to become participants in the JVC with the written consent of all the participants, but not otherwise.

15.3 The transfer of part or all of an existing participation in the JVC or the inclusion of a new participant shall be dealt with by way of an instrument in writing signed by all of the parties in question and such instrument shall be supplemental to and read together with these articles.

16. Termination.

16.1 On the termination of the corporate existence of the JVC in accordance with Clause 3 of these articles, the interests of SCHINDLER and JS in the JVC shall be purchased by CCMC in accordance with the JOINT VENTURE AGREEMENT.

16.2 On the transfer of the interests of SCHINDLER and JS to CCMC, CCMC shall pay SCHINDLER and JS, in cash, an amount equivalent to the value of their respective participations in the JVC.

16.3 The value of the participations of SCHINDLER and JS shall be based on the relevant proportion of the total value of participants' funds in the JVC to which shall be added an element to be agreed upon by negotiation to reflect the future profitability of the JVC.

16.4 The value of participants' funds shall be ascertained by reference to an audited balance sheet prepared as at the date of termination by the auditor applying on a consistent basis the principles used in the preparation of annual audited balance sheets for the JVC..

16.5 In determining the future profitability of the JVC due reference shall be made to the current and previous profitability of the JVC which shall be ascertained by reference to the JVC's audited accounts, an audited profit and loss statement shall be prepared for the period to termination as necessary.
16.6 Payment by CCMC to SCHINDLER and JS shall, in the absence of agreement to the contrary, be made not later then three months after the termination date.

17. These articles are made in both Chinese and English. The Chinese and English versions of these articles shall have equal status law.

Source: China Economic News.

APPENDIX U

PROVISIONAL ARTICLES ON CONTROL OF ADVERTISING

Promulgated on Feb. 17, 1982; and effective May 1, 1982.

Article 1. These articles are formulated to strengthen control over advertising and make it play its proper role in promoting production, englarging circulation, guiding consumers, stimulating the economy, facilitating the people's life, and developing international economy and trade so as to better serve socialist material and spiritual civilization.

Article 2. These articles cover activities of all enterprises and operational units which publish or broadcast advertisements in newspapers, magazines, radio, television or cinema, or who place ads on billboards or posters in public places in order to promote the sale of goods or provide paid for labor and services.

Article 3. The organization in charge of controlling advertising is the General Administration for Industry and Commerce and its various local bureaus.

Article 4. Corporations specializing in advertising or enterprises concurrently engaging in advertising or acting as agents in advertising business (hereinafter "advertising agency") must apply for registration and get a business license in accordance with the provisions of the Articles Governing the Registration of Industrial and Commercial Enterprises. Those who have not registered or whose registration was not approved are not allowed to conduct advertising business. Organizations handling advertisements for foreign companies must be examined and approved by the Import and Export Control Commission office at or above the provincial or autonomous region level or the level of the directly-administered muncipality.

Private persons are not allowed to conduct advertising business.

Article 5. Only enterprises having a business license or units established with government approval (hereinafter "advertisers") will be allowed to have their advertisements published, broadcast, placed, or posted.

Article 6. The content of the advertisements must be clear and truthful. No advertisement will be allowed to practice fraud or to hoodwink or deceive end-users or consumers in any way whatsoever.

In case of substandard goods, trial-manufactured goods, or goods on trial sale, the advertisement must indicate this status in order to avoid misleading the people.

Article 7. The following certificates must be shown by advertisers when applying to have their upcoming advertisements published, broadcast, placed or posted:

1. Certificate from public health agencies for advertisements for medicinal products or foodstuffs;
2. Certificate from weights & measures agencies for advertisements for weighing and measuring instruments;

3. Certificate from the award-giving organizations for advertisements with statement that the commodity was given an award;
4. Certificate of registered trademark for advertisements for commodities using trademarks;.
5. Certificate of appraisal from quality control inspection agencies for advertisements for commodities with quality grade indicated.

The advertising agency must seriously check up on the above-mentioned certificates, and they must be clearly noted in the advertisements.

Article 8. Advertisements with any of the following contents will not be allowed to be published, broadcast, placed or posted:

1. Contrary to state policies, laws and decrees;.
2. Harmful to the dignity of China's various nationalities;.
3. Reactionary, obscene, crude or superstitious;.
4. Propaganda of a slanderous nature;
5. Contrary to regulations on state secrets.

Article 9. Arrangements made by advertising agencies with respect to space, position, time and site for publishing, broadcasting, placing and posting advertisements must conform to state provisions concerning propaganda policies and economic policies.

Monopolizing advertising and unfair competition are forbidden.

Article 10. When placing billboards and posting advertisements outdoors, the regulations of city control agencies and advertising control agencies must be observed, and there must be no obstruction of traffic or degradation of the appearance of cities or the beautiful environs of scenic spots. Approval from city control agencies must be obtained for setting up large billboards.

No advertisement is allowed to be placed or posted on buildings housing government agencies, on buildings of commemorative significance, or in places with cultural relics especially protected by the state.

Article 11. Advertising fees are charged according to the standard rates set by the local bureaus of the General Administration for Industry and Commerce. Where no such standard rate has been set, the fees may be set for the time being by the advertising agency itself and reported to the local bureau of the General Administration for Industry and Commerce for the record.

Article 12. The advertising agency and advertiser must sign a contract clearly stating each side's obligations concerning the publishing, broadcasting, placing and posting of advertisements.

Article 13. In case of violation of the provisions of these articles, the parties are to be held responsible as follows:

The advertising agency will be held responsible should it violate the provisions of Article 5;

The advertisers will be held responsible should they violate the provisions of Article 6; should the advertising agency be aware of the fraud, it will be held jointly liable;

Both sides will be held responsible in case of violation of the provisions of Articles 7 and 8.

Article 14. The General Administration for Industry and Commerce must, according to the specific conditions, issue a disciplinary warning or impose a penalty on advertisers violating the provisions of these articles. In dealing with an advertising agency which has violated the provisions of these articles, the General Administration for Industry and Commerce will, according to the seriousness of the offense, issue a disciplinary warning or impose a penalty on the agency, close its business temporarily, or revoke its advertising business license.

Advertisers violating the provisions of these articles must compensate for losses thereby sustained by end-users or consumers.

Cases of gross violations with serious consequences shall be handled by the People's Court according to law.

Article 15. All organizations conducting advertising business must pay tax and pay it on time in accordance with the relevant state regulations.

Article 16. The masses have the right to supervise advertisers or advertising agencies which violate the provisions of these articles, and the masses have the right to expose them and report them to the various bureaus of the General Administration for Industry and Commerce.

Article 17. Matters concerning foreign enterprises applying for publishing, broadcasting, placing, and posting their advertisements in the People's Republic of China will be handled in light of these articles.

Article 18. Detailed implementation rules for these articles will formulated by the General Administration for Industry and Commerce.

Article 19. These articles are effective from May 1, 1982.

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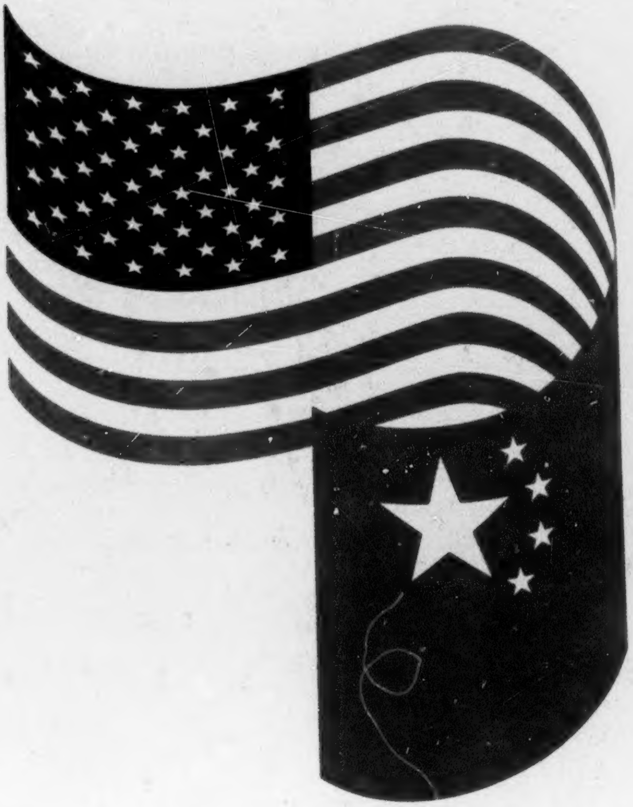INTERNATIONAL
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